

EXHIBIT W

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REBUTTAL REPORT OF DANIEL R. FISCHEL

December 8, 2021

I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

1. I previously submitted the Report of Daniel R. Fischel in the above-captioned matter on November 8, 2021 (the “Fischel Report”). In that report, I set forth and provided the bases for my conclusions that: (1) Mr. Musk’s actions were consistent with his prior-stated interest in taking Tesla private and in protecting investors who believed in his vision; (2) it was reasonable to believe that the proposed transaction would have been funded if it moved forward; (3) the \$420 potential offer price was reasonable; and (4) neither Mr. Musk nor the other Defendants benefited from the alleged fraud.¹

2. Also on November 8, 2021, Plaintiffs provided the Expert Report of Professor Joshua Mitts, Ph.D. (the “Mitts Report”) and the Expert Report of Professor Guhan Subramanian (the “Subramanian Report”). Professor Mitts states that he was asked to investigate and analyze issues related to short selling shares of Tesla stock, while Professor Subramanian explains that he was asked to answer questions related to typical management buyouts (“MBOs”).²

3. On November 10, 2021, Plaintiffs provided the Expert Damages Report of Michael L. Hartzmark, Ph.D. (the “Hartzmark Report”). Dr. Hartzmark states that he was asked to: (1) opine on the economic materiality of the alleged false and misleading statements; (2) opine on loss causation related to Plaintiff’s claims; and (3) estimate the amount of alleged artificial inflation or deflation, as appropriate, attributable to the alleged fraud per share for Tesla common stock, per contract for call and put stock options, and per Note for Tesla debt securities for each day of the Class Period.³

4. I have been asked by counsel for the Defendants to analyze the economic evidence as it relates to Plaintiffs’ experts’ analyses and opinions. I have been assisted by

¹ Fischel Report §§ III-VI. My qualifications and compensation are presented, and unless otherwise noted capitalized terms are defined, in the Fischel Report. My current curriculum vitae is attached as **Appendix A**.

² Mitts Report ¶ 1 & Subramanian Report ¶ 34.

³ Hartzmark Report ¶ 4.

Compass Lexecon's professional staff. **Appendix B** lists the materials I have relied upon in preparing this report.

5. Based on these materials and our analysis, I have reached the following principal conclusions:

- Dr. Hartzmark's analysis of alleged damages is fundamentally flawed and unreliable for numerous reasons;
 - Dr. Hartzmark's analysis of alleged damages is fundamentally flawed from the outset because he makes no attempt to isolate the effect of the allegedly false information from the uncontested true statement that Mr. Musk was considering taking Tesla private at \$420 per share;
 - Dr. Hartzmark ignores the fact that market participants understood from the beginning that Mr. Musk's proposal lacked details and was uncertain;
 - Dr. Hartzmark ignores that Tesla's stock price increased rather than decreased on August 13, 2018 when Mr. Musk elaborated upon his "funding secured" statement;
 - Dr. Hartzmark mistakenly focuses on the August 17, 2018 article in *The New York Times*, which did not contain any new information about the alleged misstatements;
 - There is substantial uncertainty about whether short sellers made or lost money, or would have lost money anyway;
 - Dr. Hartzmark's estimates of alleged damages for Tesla's Notes are fundamentally flawed because he uses unreliable price data that overstate alleged artificial inflation under his own analysis; and
- Neither Professor Mitts nor Professor Subramanian addresses what is in dispute in this case.

I elaborate upon and provide the bases for my conclusions in the remainder of this report.

II. DR. HARTZMARK'S ANALYSIS OF ALLEGED DAMAGES IS FUNDAMENTALLY FLAWED AND UNRELIABLE

6. Dr. Hartzmark divides the Class Period into the "Tweets Interval," which covers the period on August 7, 2018 from the initial tweet at 12:48 p.m. to the market close at 4:00 p.m.,

and the “Corrective Interval,” which covers the period from the market close on August 7, 2018 through the market close at 4:00 p.m. on August 17, 2018.⁴ After controlling for market and industry factors on Tesla’s stock price, he estimates an “adjusted price” of \$312.90 on August 17, 2018 and claims that the entire difference between the closing price on August 7, 2018 and his adjusted price – \$66.67 per share – measures the amount of “artificial inflation” caused by the alleged fraud.⁵

7. Dr. Hartzmark divides this amount into the “direct” impact, which equals the abnormal price increase during the Tweets Interval of \$23.27, and the “consequential impact” (which he terms “Consequential Harm”), i.e., everything else.⁶ Dr. Hartzmark opines that had the alleged fraud not occurred, Tesla’s stock would have traded on every day during the Class Period at his adjusted price of \$312.90.⁷

8. As explained below, Dr. Hartzmark’s analysis of alleged damages for all Tesla securities is fundamentally flawed and unreliable for numerous reasons.

A. Dr. Hartzmark’s Analysis of Alleged Damages Is Fundamentally Flawed from the Outset Because He Makes No Attempt to Isolate the Effect of the Allegedly False Information from the Uncontested True Statement that Mr. Musk Was Considering Taking Tesla Private at \$420 per Share

9. Dr. Hartzmark opines that the entire \$23.27 abnormal increase in Tesla’s stock price that he estimates from 12:48 p.m. to the market close on August 7, 2018 was “directly caused by the alleged misrepresentations and/or omissions in the Musk Tweets and related disclosures,” and measures “the level of artificial inflation related to the *direct effect*” of the

⁴ Hartzmark Report ¶ 66.

⁵ Hartzmark Report ¶¶ 147 & 174.

⁶ Hartzmark Report ¶ 171.

⁷ Hartzmark Report ¶ 174. I note that Dr. Hartzmark’s “adjusted price” does not make economic sense because it assumes that absent the alleged fraud Tesla’s stock would not have moved by a single penny over the Class Period for reasons not explained by market and industry factors, ignoring that his own event study model shows that the daily standard error (a measure of volatility) of the abnormal stock returns prior to the start of the Class Period is 2.6%, i.e., his own model establishes that the stock moved substantially on a daily basis for reasons unexplained by those factors. Hartzmark Report workbook “App 5 7, TBL 1 4 5 7 8 9.xlsx” tab “Regression.”

allegedly misleading information, which he terms “Direct Artificial Inflation.”⁸ Consequently, his analysis of alleged damages is fundamentally flawed from the outset because he makes no attempt to isolate the effect of the allegedly misleading information from the uncontested true statement that Mr. Musk was considering taking Tesla private at \$420 per share.⁹

10. Dr. Hartzmark compounds this flaw by claiming that \$23.27 of the subsequent decline in Tesla’s stock price during his Corrective Interval reflects the loss to Class members from the dissipation of the purported Direct Artificial Inflation.¹⁰ Accordingly, without any analysis, he simply assumes that none of this price decline reflects the reversal of the price increase attributable to the uncontested true statement.¹¹ However, as discussed *infra* § II.B., the market quickly understood that there were substantial hurdles to taking Tesla private. As a result, the increase in Tesla’s stock price following Mr. Musk’s true statement that he was considering taking Tesla private was subsequently reversed.¹² Dr. Hartzmark makes no attempt

⁸ Hartzmark Report ¶¶ 13, 77 & 171 (emphasis in original). *See id.* §§ VI.B. & VI.C. for details on the estimation of Direct Artificial Inflation. Dr. Hartzmark defines the Musk Tweets as the tweets Mr. Musk issued on August 7, 2018 along with “an email to employees at 3:16 p.m., which was then subsequently posted on a public Tesla blog that was linked to a Musk tweet at 3:28 p.m.” *Id.* ¶ 4 n.8.

⁹ I understand that Plaintiff acknowledges that the statement that Mr. Musk is “considering taking Tesla private at \$420” is true. Plaintiff’s Responses to Defendants’ First Set of Interrogatories, In re Tesla Inc. Securities Litigation, November 4, 2021 at 183-184 (“Plaintiff contends that Elon Musk was considering taking Tesla private and initially proposed a price of \$420 and, therefore, had an incentive to control the price of Tesla stock to facilitate any potential transaction.”).

¹⁰ Hartzmark Report ¶¶ 66 & 201. *See id.* § VI.A. for details on Dr. Hartzmark’s loss causation analysis.

¹¹ Hartzmark Report ¶ 171.

¹² Dr. Hartzmark opines that the market’s assessment of the probability of the deal being completed fell to “0%” on August 17, 2018, and finds that the abnormal return in Tesla’s stock price following Mr. Musk’s August 24, 2018 disclosure after the market closed that he was no longer considering taking Tesla private is negative but not statistically significant. Hartzmark Report Table 10 & ¶ 139. Presumably, he reports the lack of statistical significance to support his claim that the assessment of the probability previously had fallen to 0%, but it is internally inconsistent for him to disregard this negative abnormal return because it is not statistically significant when his own analysis finds that *none* of the abnormal returns from August 8, 2018 through August 16, 2018 – i.e., all but the first and last day of the Class Period – are statistically significant yet he uses *all* of them to measure alleged damages. *Id.* ¶¶ 86, 93, 99, 108, 114, 120, 124, 135 & Appendix 5 (showing that the p-values of the *t*-statistics (i.e., measures of statistical significance) for these dates are typically far from his significance threshold in which the p-value must be 5% or lower (equivalent to a *t*-statistic with an absolute value of 1.96 or higher in a two-tailed test)). Dr. Hartzmark established his threshold in Hartzmark Class Cert Report Appendix E ¶ 9, stating “I use the scientifically accepted level of certainty and declare statistical significance at a 95% level,” which is equivalent to a p-value of 5%.

to distinguish the decrease in Tesla's stock price purportedly attributable to the alleged misrepresentations and/or omissions from the decrease that is attributable to the market's realization that Mr. Musk's proposal was uncertain.

11. Dr. Hartzmark also simply assumes, without any analysis, that none of the purported "Consequential Harm" is related to the uncontested true statement. However, market participants discussed how Mr. Musk's behavior and focus on Tesla's stock price and short sellers – neither of which was allegedly misstated¹³ – as reflected in his potential offer were unnecessary and worrisome distractions during the Class Period. For example:

- An August 8, 2018 Bernstein analyst report states: "We see upside risk in the near term to perhaps \$400, but downside risk to \$340 (yesterday's low price) or below if no firmer details emerge, as investors would likely increasingly debate Musk's credibility and over-focus on the shares' price and volatility."¹⁴
- An August 9, 2018 *Los Angeles Times* article states: "The Tesla employee who seems most distracted by the stock price is Elon Musk, as shown by his relentless grousing about short sellers One of the enduring problems with Tesla has been Musk's apparently short attention span. Job One for the company is getting its new Model 3 sedan rolling off its production line at the mass-market price of about \$35,000 that Musk has long said would signify the company's maturity as an automaker. It's still struggling to achieve the promised output, but Musk keeps interjecting new projects into Tesla's portfolio, such as a sports car and semi truck said to be in the offing, though without firm deadlines. The massive complexity of taking the company private now won't help to focus his or anyone else's attention on production."¹⁵
- An August 10, 2018 *Reuters News* article reports: "'His whole focus on shorts is a misallocation of his time and resources,' said investor Christopher Irons, founder of independent investigative research website quoththeravenresearch.com."¹⁶

Dr. Hartzmark incorrectly conflates these negative reactions to the uncontested true statement with purported Consequential Harm from the alleged misstatements.

¹³ In fact, Dr. Hartzmark documents that these issues were known by market participants and had affected Tesla's stock price prior to the beginning of the Class Period. Hartzmark Report ¶ 20.

¹⁴ A.M. (Toni) Sacconaghi, Jr., "Tesla: Going private? Who knows... does Elon?," Bernstein, August 8, 2018.

¹⁵ "No gain in Tesla going private," *Los Angeles Times*, August 9, 2018.

¹⁶ "Tesla short-sellers back in force as shares remain shaky," *Reuters News*, August 10, 2018.

12. Moreover, Dr. Hartzmark considers the purported Consequential Harm to be “foreseeable” and opines that had there been no alleged misrepresentations and/or omissions, the price of Tesla’s stock would have immediately reflected all of the negative consequences that supposedly were priced in during the remainder of the Class Period.¹⁷ But Dr. Hartzmark fails to explain why Mr. Musk, who could purportedly “foresee” the Consequential Harm, nevertheless inflicted it upon himself (as Tesla’s CEO and largest individual shareholder), as well as on the Company, its Board, and its investors.¹⁸

13. A further consequence of Dr. Hartzmark’s disregard of the uncontested truthful statement is that he ignores that his basis to use the Class Period as the relevant event window applies whether or not there was an alleged misstatement or omission, demonstrating that he fails to establish that the entire Class Period is tethered to the alleged fraud.¹⁹ He claims that “it is reasonable and appropriate to consider the entire Class Period as the relevant event window” based on several criteria, including the statistically significant price increase and high level of trading volume following the initial tweet on August 7, 2018, the high level of volume over the remainder of the Class Period, the scrutiny of regulators, the focus of Tesla’s Board and other Company personnel, and substantial news and analyst coverage.²⁰ However, had Mr. Musk

¹⁷ Hartzmark Report ¶¶ 4 & 175.

¹⁸ I note that Professor Mitts’ opinion that the purported injury to long-term short sellers like Jim Chanos from an increase in Tesla’s stock price due to the Musk Tweets was a “foreseeable” and “obvious and unavoidable” consequence of Mr. Musk’s alleged misstatements (Mitts Report ¶¶ 1, 11 & 138) directly contradicts Dr. Hartzmark’s opinion that the negative consequences of the same alleged misstatements were “foreseeable” and caused Tesla’s stock price to decline. If Dr. Hartzmark is correct and the Class Period price decline was foreseeable, then Mr. Musk knew that an attempt to hurt long-term short sellers like Mr. Chanos by committing the alleged fraud was futile. If Professor Mitts is correct that harm to the short sellers was foreseeable and unavoidable, then the Class Period price decline was not foreseeable.

¹⁹ I provide further evidence that Dr. Hartzmark fails to establish that the entire Class Period is the relevant event window because of his inconsistent reliance on statistical significance (*see supra* ¶ 10 n.12) and his mistaken focus on the August 17, 2018 article in *The New York Times* (*see infra* § II.D.).

²⁰ Hartzmark Report ¶ 65. Dr. Hartzmark also includes the statistically significant cumulative decline in Tesla’s stock price from August 7, 2018 to August 17, 2018 as a basis to use the Class Period as the relevant event window but, as explained *infra* § II.D., he incorrectly incorporates the August 17, 2018 stock price decline; when this decline is excluded, the cumulative decline is not statistically significant. In addition, based on Dr. Hartzmark’s back-up, Tesla’s average daily trading volume from August 14, 2018 through August 16, 2018 of

tweeted that he was considering taking Tesla private at \$420 per share without making any alleged misrepresentations or omissions, it is reasonable to believe that Dr. Hartzmark's criteria would have behaved similarly.

14. Dr. Hartzmark similarly fails to fully and reliably analyze the effects of another alleged misstatement and again provides a fundamentally flawed opinion on alleged damages that he associates with it. He states that the motion to dismiss order in this matter "also upheld the actionability of an alleged misrepresentation in an August 13, 2018 tweet by Musk [after the markets closed] that named financial advisors (Silver Lake and Goldman Sachs) for the going private transaction," and opines that Tesla's stock price declined on August 14, 2018 "on reports questioning the accuracy of Musk's latest tweets on hiring advisers Goldman Sachs and Silver Lake."²¹ But, Dr. Hartzmark uses the price decline on August 14, 2018 to measure alleged damages for Class members who purchased on all prior days in the Class Period – August 7, 2018 through August 13, 2018 – *before* the alleged misstatement was made.²² Hence, Dr. Hartzmark absurdly ascribes losses to Class members who purchased at prices that were not impacted by the associated alleged misstatement.

7.4 million shares was not unusual because it was below the average daily trading volume of 8.3 million shares during the 120-trading days prior to the Class Period. Hartzmark Report workbook "App 5(was F)- Daily Reg Results.xlsx" tab "Volume." Further, the decisions by regulators to scrutinize the proposed transaction represent the actions of third parties not under the Defendants' control that could not have been disclosed any earlier, and thus cannot be used to estimate alleged artificial inflation on prior days during the Class Period; I note that Dr. Hartzmark's event study found that the net effect on Tesla's stock price of the SEC's announcement that it had filed a complaint regarding the Musk Tweets and the subsequent announcement that the parties had settled is positive. Hartzmark Report ¶¶ 140-145 (showing that the abnormal returns following the two announcements are -13.84% and +17.53%, respectively).

²¹ Hartzmark Report ¶¶ 30 & 109-110. I understand that Plaintiffs abandoned their claim regarding this alleged misstatement, in which case the portion of the August 14, 2018 price decline that Dr. Hartzmark attributes to this alleged misstatement should be excluded from his analysis of alleged damages altogether.

²² Hartzmark Report ¶ 147 & Table 5.

B. Dr. Hartzmark Ignores the Fact that Market Participants Understood from the Beginning that Mr. Musk's Proposal Lacked Details and Was Uncertain

15. Without any reliable analysis, Dr. Hartzmark merely “assume[s] … that the finder of fact will determine that [the entire Class Period] is filled with numerous statements and partial corrective disclosures revealing curative information,” in particular “[t]he failure to offer meaningful, reliable, and clear information [about the potential going private transaction that] steadily contributed to and increased skepticism about the true (and concealed) status of the proposed transaction and the veracity of the Musk Tweets,” which “throughout the Class Period proximately caused the artificially inflated price of Tesla’s securities to decline.”²³ However, he ignores the fact that market participants understood from the beginning that Mr. Musk’s proposal lacked details and quickly understood that it was uncertain.

16. Indeed, analyst commentary noted the uncertainty and lack of details regarding the potential transaction immediately after the Musk Tweets. For example, a Bank of America Merrill Lynch report on this date states: “It should be noted that the proposal/transaction is far from finalized, and would require a shareholder vote. More importantly, although TSLA did confirm a potential privatization through Musk’s statement, no theoretical transaction method, funding plan, or structure was outlined, and there is still some skepticism over whether such a transaction would ultimately (or even could) be executed.”²⁴

17. Additional commentary by market participants following the initial tweets also demonstrates that there was substantial doubt that Mr. Musk could or would take Tesla private at \$420 per share. For example:

- An August 7, 2018 *Bloomberg First Word* article states: “Investors and analysts,

²³ Hartzmark Report ¶¶ 4 n.9, 13 & 39 (emphasis in original). As noted *supra* ¶ 10 n.12, Dr. Hartzmark’s event study analysis does not associate the “numerous statements and partial corrective disclosures revealing curative information” with statistically significant price declines.

²⁴ John Murphy, Aileen Smith, and Yarden Amsalem, “Shorts may be burned for now … but buyer beware,” Bank of America Merrill Lynch, August 7, 2018.

even Musk himself, all seemed a little uncertain whether this will happen. The same with the market: Tesla shares closed up 11% to \$379.57. That was a great run, but still about \$40 shy of what Musk would want to offer shareholders to get a deal done. Shares were coming down by about \$5 in after-market trades.”²⁵

- An August 7, 2018 Barclays report states: “... we are skeptical about the funding and proposed structure.”²⁶
- An August 7, 2018 Morningstar report states: “If a deal is announced and we think its execution is more likely than not, we will raise our fair value estimate to the deal price, but for now we are leaving our fair value estimate of \$179 in place.”²⁷
- An August 8, 2018 Bernstein analyst report titled “Tesla: Going private? Who knows... does Elon?” states: “On the other hand, Musk’s tweets that ‘Investor support is confirmed’ and ‘Funding secured’ would suggest that he has spoken with some few stakeholders. Here, as with nearly everything else, we remain with more questions than answers. What does Musk mean by ‘investor support’ – has he already gotten a go-ahead from Tesla’s major institutional shareholders, and in what form? If so, why is the deal still ‘contingent on a shareholder vote’ (as he noted within the same tweet)? Did Tesla’s board of directors or management team already know about these plans? If so, why was the announcement so abrupt and seemingly ‘unofficial’? Has Musk run his plan of maintaining retail shareholders within a private Tesla by his legal team?”²⁸
- An August 8, 2018 JPMorgan report “assign[s] only a 50% probability to [a going private] scenario in our updated valuation.”²⁹
- An August 8, 2018 PiperJaffray report states: “We note that many important details are still unknowable, given the precedent-setting nature of this proposal as well as the vague verbiage used to describe it. As a result, we believe this deal is unlikely to succeed in the very near-term, if it succeeds at all. We also note that, for true believers with a multi-year time horizon, the suggested go private valuation of \$420/share is probably unpalatable (especially if they cannot invest in illiquid, private securities), but gaining 50%+ shareholder approval may nonetheless prove easier than funding and structuring the deal in a way that is legal and executable.”³⁰
- An August 8, 2018 Morgan Stanley analyst report is titled: “Elon Musk May

²⁵ “Crazy Ride for Tesla Watchers as Musk Tweets: TOPLive Takeaways,” *Bloomberg First Word*, August 7, 2018.

²⁶ Brian A. Johnson, “Musing about going private is the latest strange twist,” Barclays, August 7, 2018.

²⁷ David Whiston, “Musk Tweets Tesla May Go Private at \$420 a Share but Stockholders May Not Have to Sell at That Price,” Morningstar, August 7, 2018.

²⁸ A.M. (Toni) Sacconaghi, Jr. “Tesla: Going private? Who knows... does Elon?,” Bernstein, August 8, 2018.

²⁹ Ryan Brinkman, David L Kelley, and Aayush Gupta, “Raise PT to Reflect Possible Go-Private Offer, But Remain Underweight on Chance Shares Could Again Trade on Fundamentals,” J.P. Morgan, August 8, 2018.

³⁰ Alexander E. Potter and Winnie Dong, “Questions Remain; Overweight-rated TSLA Not Going Private Anytime Soon,” PiperJaffray, August 8, 2018.

Want Tesla Private: We Question the Feasibility of a Potential Transaction”³¹

18. In particular, analysts expressed concerns about the deal structure. For example:

- An August 7, 2018 Barclays report states: “And not clear how public shareholders stay in a private company. Musk promised that existing shareholders ‘can stay investors in a private Tesla’ – but we’re not clear how that would work under current registration rules/caps on non-accredited and total investors (the JOBS act requirement) – although Musk hinted at a special purpose vehicle structure that might be able to avoid the caps.”³²
- An August 7, 2018 Cowen analyst report states: “The capital structure is the most uncertain element about this development revealed via Twitter, as an LBO model would not work if existing investors were to remain as Mr. Musk claims they will. It is also unclear if current publicly traded debt would remain public, which would in turn continue to require financial reporting in the public domain and make the company subject to the quarterly scrutiny it is trying to avoid.”³³
- An August 7, 2018 RBC Capital Markets report states: “... some of [the Company’s stock] holders may not be able to hold Tesla (or as much as they currently hold) should Tesla go private. A preliminary review of some of the big mutual fund holders indicates holding limits on illiquid securities. At the very least it could cause broader portfolio reviews.”³⁴
- An August 8, 2018 Berenberg report states: “This is still subject to shareholders’ approval, which may be the most obvious challenge for the transaction. The funding of the transaction is unclear, but is potentially less of an obstacle than obtaining shareholders’ approval, in our view.”³⁵
- An August 8, 2018 Bernstein report states: “Can existing shareholders hold stakes in the company, and would they be willing to hold on? In Tesla’s official blog post and in responses on Twitter, Elon envisioned that all current shareholders could remain as investors within a private version of Tesla, via a Special Purpose Vehicle (SPV) – this includes retail investors. We briefly spoke with securities lawyers, and we do not believe there is any precedent for a public company going private while maintaining its shareholder base of retail (non-accredited) investors, given regulatory limitations. Even with a Special Purpose Vehicle (SPV), it is unclear how Tesla may circumvent certain public company / registration requirements while maintaining a large base of non-accredited investors (~13% of Tesla’s shares are held by retail investors) and while keeping public debt outstanding.... Will mutual fund companies be able to hold several billion dollars in private company equity in one company? We don’t know. Several mutual

³¹ Adam Jonas, Arminas, Sinkevicius, and Carmen Hudley, “Elon Musk may want Tesla private: We question the feasibility of a potential transaction,” Morgan Stanley, August 8, 2018.

³² Brian A. Johnson, “Musing about going private is the latest strange twist,” Barclays, August 7, 2018.

³³ Jeffrey Osborne, Thomas Boyes, Christopher Souther, and Emily Riccio, “Thoughts on Elon’s tweet - go private offer at \$420,” Cowen, August 7, 2018.

³⁴ Joseph Spak, George Clark, and Joseph Heidt, “On Tesla \$420,” RBC Capital Markets, August 7, 2018.

³⁵ Alexander Haissl, Fei Teng, Cristian Dirpes, and Viktoria Oushatova, “Private Tesla to send ripples across industry,” Berenberg, August 8, 2018.

fund companies own \$2B+ in Tesla shares. Typically, mutual fund companies that own shares in pre-IPO companies have limited fund exposure (almost always less than 5% of a fund's assets, and typically around 2%), so it is possible that Tesla going private might force holders to reduce or sell their shares due to fund constraints/parameters.”³⁶

- An August 8, 2018 PiperJaffray report states: “We are unsure about the legal implications and procedural requirements associated with transitioning public equity into a widely-held private security through a special-purpose entity similar to the SpaceX equity arrangement. In our view, creating this novel shareholding structure in compliance with securities laws may constitute the biggest hurdle to formalizing an offer.”³⁷

19. In addition, while it was reasonable to believe that the proposed transaction would have been funded if it moved forward,³⁸ Dr. Hartzmark’s assumption that “funding secured” “could be read by a reasonable investor to mean complete funding for the transaction was unconditionally secured” at the time of the Musk Tweets is inconsistent with how market participants interpreted the phrase.³⁹ For example:

- An August 7, 2018 UBS report states: “The deal would likely require participation from numerous banks and institutional investors, and we think it likely that news of the deal would have leaked had Tesla already held discussions to secure funding.”⁴⁰
- An August 7, 2018 Barclays report states: “Even with the Saudi fund taking a 3-5% stake (see ‘Tesla shares move higher on Saudi Arabia fund stake’ FT, Aug 7, 2018), that leaves a large funding gap.”⁴¹
- An August 7, 2018 CFRA report states: “We are surprised by his claim of financing secured, even as the FT reports the Saudi Arabia Public Investment Fund took a stake in TSLA.”⁴²
- An August 8, 2018 Evercore analyst report states: “Our view is that ‘Funding secured’ should be interpreted as a strong verbal commitment, with funds available and parties willing to execute quickly. However, it could be less than

³⁶ A.M. (Toni) Sacconaghi, Jr. “Tesla: Going private? Who knows... does Elon?,” Bernstein, August 8, 2018.

³⁷ Alexander E. Potter and Winnie Dong, “Questions Remain; Overweight-rated TSLA Not Going Private Anytime Soon,” PiperJaffray, August 8, 2018.

³⁸ Fischel Report § IV.

³⁹ Hartzmark Report ¶¶ 4 n.9 & 28.

⁴⁰ Colin Langan and Gene Vladimirov, “A Disruptive Approach to Disclosing Material Info,” UBS, August 7, 2018.

⁴¹ Brian A. Johnson, “Musing about going private is the latest strange twist,” Barclays, August 7, 2018.

⁴² Efraim Levy, “CFRA reiterates hold opinion on shares of Tesla Inc,” CFRA, August 7, 2018.

this. It may also be that initial legal documents, term sheets, letters of intent have been signed.”⁴³

- An August 8, 2018 Oppenheimer report states: “... funding sources for such a transaction are not yet identified nor how much capital would be needed given the expected option for shareholders to participate in the transaction.”⁴⁴
- An August 8, 2018 PiperJaffray report states: “The other major hurdle relates to funding the \$420/share buyout, because some form of funding would be necessary for all shares that select cash instead of new equity. Funding the deal with debt (an LBO) seems difficult, given the levered state of TSLA’s balance sheet, the company’s junk (B-) rating, and its history of negative cash flow. Musk may have lined up ‘big thinker’ equity investors with deep pockets and generous investment time horizons, but if these are sovereign wealth funds or foreign partners, then Tesla may face a review from the Committee on Foreign Investment (CFIUS).”⁴⁵
- An August 8, 2018 Morgan Stanley report states: “We reiterate we struggle to identify a natural strategic buyer for Tesla. We first addressed this issue in our December 5th 2017 report: Tesla and SpaceX: A Compelling Relationship where we stated: ‘As Tesla surveys its strategic alternatives, we see extremely limited scope for potential strategic or financial buyers given the capital intensity, economic factors, political factors and aforementioned key man risk. CFIUS (The Committee on Foreign Investment in the United States) represents a formidable barrier to significant foreign ownership, in our opinion.’”⁴⁶

20. Dr. Hartzmark explains that once a potential going private deal is announced, the company’s stock price reflects the market’s assessment of the probability that the deal will close.⁴⁷ Based on a formula he presents, Dr. Hartzmark calculates that Tesla’s closing stock price on August 7, 2018 – i.e., the peak closing price during the Class Period – implied a “probability of the going private transaction being completed immediately after the Musk Tweets” of only 36 percent.⁴⁸

21. To determine whether this probability represents a high or low market expectation

⁴³ George Galliers and Chris McNally, “A Private Life is a Happy Life,” Evercore ISI, August 8, 2018.

⁴⁴ Colin Rusch, Noah Kaye, Kristen Owen, and Luis Amadeo, “TSLA: Going Private?,” Oppenheimer, August 8, 2018.

⁴⁵ Alexander E. Potter and Winnie Dong, “Questions Remain; Overweight-rated TSLA Not Going Private Anytime Soon,” PiperJaffray, August 8, 2018.

⁴⁶ Adam Jonas, Arminatas, Sinkevicius, and Carmen Hudley, “Elon Musk may want Tesla private: We question the feasibility of a potential transaction,” Morgan Stanley, August 8, 2018.

⁴⁷ Hartzmark Report ¶ 178-180.

⁴⁸ Hartzmark Report ¶ 180-181.

that the proposed transaction would close, we applied Dr. Hartzmark's formula to the sample of 118 going private transactions analyzed in the Fischel Report.⁴⁹ As **Exhibit 1** demonstrates, we find that 96 percent of the precedent deals have a higher probability of deal completion than Tesla,⁵⁰ with a median probability of 94 percent.⁵¹ Consequently, the market's expectation of whether the proposed Tesla transaction would close as represented by Dr. Hartzmark's probability formula was substantially lower than that of the typical announcement of a going private transaction.

22. Finally, on August 9, 2018, Tesla's stock price closed below \$356.85, the price just prior to Mr. Musk's initial tweet, and continued to close below this price for the remainder of the Class Period.⁵² Therefore, under Dr. Hartzmark's formula, the probability of the proposed Tesla deal closing fell to zero percent on August 9, 2018.⁵³

C. Dr. Hartzmark Ignores that Tesla's Stock Price Increased Rather than Decreased on August 13, 2018 when Mr. Musk Elaborated Upon his "Funding Secured" Statement

23. Before the market opened on August 13, 2018, Mr. Musk provided an update on Tesla's blog regarding his plans to take Tesla private. In the blog post, Mr. Musk discussed,

⁴⁹ Fischel Report ¶ 28 & n.59; Hartzmark Report ¶ 181.

⁵⁰ Only 5 of 118 transactions (or 4 percent) had a probability on the announcement date that was smaller than Tesla's probability on August 7, 2018. The analysis for the sample uses prior closing prices as the pre-announcement price (i.e., the proxy for the price should the going private deal fail or not be completed) rather than intraday prices like Dr. Hartzmark used to calculate Tesla's probability. If we use the closing price on August 6, 2018 rather than the pre-Tweet price he used, the probability is 48 percent (= (8/7 closing price of \$379.57 – 8/6 closing price of \$341.99) / (offer price of \$420 – 8/6 closing price of \$341.99)) and only one additional transaction in the sample has a lower percentage.

⁵¹ As shown in Exhibit 1, the probabilities in our sample range from -296 percent to 394 percent. The three probabilities below 0 percent are a function of Dr. Hartzmark's formula whenever the stock price declines after the announcement, or the offer price is below the pre-announcement price. The 16 probabilities greater than 100 percent likely indicate that the market expects that the deal will close at a higher price than the initial offer, either from the same or a competing bidder.

⁵² Hartzmark Report ¶ 64 & Table 4.

⁵³ The numerator of the probability formula is the market price less the price "should the going private deal fail or not be completed (P_{Public})," which Dr. Hartzmark assumes is the \$356.85 pre-Tweet price; therefore, once the market price falls below this price, the formula reports a negative number, which implies a 0 percent probability (because a probability cannot fall below 0 percent). Hartzmark Report ¶ 178-181.

among other things, what has happened so far, why he made a public announcement, what he meant by “funding secured,” and next steps.⁵⁴ Dr. Hartzmark opines that after “investors parsed the statement” on this day, “investors now know that his ‘funding secured’ tweet last week was premature at best.”⁵⁵

24. However, if investors learned the purported “truth” from Mr. Musk’s August 13, 2018 blog post, then one would expect that Tesla’s stock price would have declined on August 13, 2018. Instead, Dr. Hartzmark’s own event study analysis finds that Tesla’s stock price increased (albeit not significantly) on August 13, 2018 after controlling for the effects of market and industry factors.⁵⁶ Consequently, Dr. Hartzmark’s own analysis contradicts his claim that investors learned the “truth” about the “funding secured” tweet on August 13, 2018. Rather, the August 13 blog post is consistent with market participants’ earlier understanding of what “funding secured” meant as discussed *supra* ¶ 15.

D. Dr. Hartzmark Mistakenly Focuses on the August 17, 2018 Article in *The New York Times*, Which Did Not Contain Any New Information about the Alleged Misstatements

25. Dr. Hartzmark’s analysis of alleged artificial inflation includes the abnormal decline in Tesla’s stock price on August 17, 2018, which Dr. Hartzmark attributes to an article in *The New York Times* that showed the “Musk tweets … to be false.”⁵⁷ Notably, the stock price decline on August 17, 2018 accounts for almost half of the total stock price decline during the

⁵⁴ “Update on Taking Tesla Private,” August 13, 2018, <https://www.tesla.com/blog/update-taking-teslaprivate>.

⁵⁵ Hartzmark Report ¶ 100.

⁵⁶ Hartzmark Report Table 5. Dr. Hartzmark claims that on August 13, 2018, Tesla’s stock price first increased due to the blog post before declining “as investors parsed the statement” (*id.* ¶ 100), but this claim does nothing to excuse the fact that his own analysis finds that the net price impact of the blog post was positive.

⁵⁷ Hartzmark Report §V.B.11. & Table 10. Dr. Hartzmark reports that a version of the article was made available online at 11:22 p.m. on August 16, 2018. *Id.* ¶ 125 n.204. Plaintiff reports that the article “appeared in print on August 17, 2018.” Complaint ¶ 113. I refer to it as the “August 17, 2018 Article” because that is both the print publication date and the date the market reacted to the information it contained.

Class Period that Dr. Hartzmark attributes to the alleged fraud.⁵⁸ Dr. Hartzmark's analysis with respect to this *New York Times* article is flawed for two reasons: (1) he ignores that the information in the article that related to the alleged misstatements was already known;⁵⁹ and (2) the new information in the article that moved the stock price is not alleged to have been misstated.

26. Dr. Hartzmark states that the article noted that funding for the proposed going private transaction "was far from secure."⁶⁰ But, as explained *supra* ¶ 23, Dr. Hartzmark claims that after the August 13, 2018 blog post, investors were aware that the "funding secured" tweet "was premature at best," yet he fails to explain what additional information was revealed in *The New York Times* article. Indeed, market participants commented after the August 13, 2018 blog post that they understood that complete funding for the transaction was not unconditionally secured.⁶¹ For example:⁶²

- An August 13, 2018 article in the *Business Insider* titled "It is now abundantly clear that Elon Musk does not have 'funding secured,'" states: "Elon Musk has written a blog post explaining why he said last week on Twitter that he might take Tesla private at \$420 a share. 'Funding secured,' he declared in the tweet. But after reading Musk's new post, the only conclusion to be drawn is that funding was, in fact, not secured.... And according to Musk's own words, the deal sounds far from done."⁶³
- An August 13, 2018 article in *The Canadian Press* states: "It now appears as if

⁵⁸ Hartzmark Report Table 4 (showing that Dr. Hartzmark's calculation of the Cumulative Abnormal Return almost doubles on August 17, 2018 from -9.31% to -17.56%).

⁵⁹ As Dr. Hartzmark acknowledges, the repetition of information will not affect the price of a stock traded in an efficient market, such as the one in which he opines Tesla stock and options traded. Hartzmark Report ¶¶ 1 & 166. I note that he does not opine that the Tesla Notes traded in an efficient market. *Id.* ¶ 1.

⁶⁰ Hartzmark Report ¶ 125. The "far from secure" statement appears to be the opinion of the article's authors. "Elon Musk Details 'Excruciating' Personal Toll of Tesla Turmoil," *The New York Times*, August 16, 2018.

⁶¹ As part of his support for including the August 17, 2018 price decline in his analysis, Dr. Hartzmark claims that "J.P. Morgan stated that subsequent events led the analyst to believe that funding was not secured for going private" but ignores that the report discusses the August 13, 2018 blog post and does not mention the August 17, 2018 *New York Times* article. Hartzmark Report ¶ 133.

⁶² See also "On Tesla going private, Elon Musk admits he doesn't have 'funding secured,'" *Los Angeles Times*, August 13, 2018; "Wall Street has spoken: Tesla funding is not 'secured'; Price stays well below Elon Musk's stated go-private level after explanation, showing investors' valid doubts," *Market Watch*, August 13, 2018.

⁶³ "It is now abundantly clear that Elon Musk does not have 'funding secured,'" *Business Insider*, August 13, 2018.

financing for the deal is far from locked up, although Musk wrote on Monday that he was encouraged to pursue the buyout in a July 31 meeting with the managing director of Saudi Arabia's Public Investment Fund.”⁶⁴

- An August 13, 2018 article in *The New York Times* states: “... three people familiar with the workings of the Saudi fund cast doubt on his account. They said the fund had taken none of the steps that such an ambitious transaction would entail, like preparing a term sheet or hiring a financial adviser to work on the deal.”⁶⁵

27. Dr. Hartzmark also states that the article noted that PIF “had not committed to provide any cash.”⁶⁶ This fact also was well known beforehand. For example:

- An August 8, 2018 *Wall Street Journal* article reports: “Saudi Arabia’s Public Investment Fund recently completed the purchase of a nearly 5% stake in Tesla, a senior Saudi adviser familiar with the matter said on Tuesday. He said he wasn’t aware of any plan by the Saudi investment fund to increase its holding in Tesla.”⁶⁷
- An August 11, 2018 a *Reuters News* article reports: “Saudi Arabia’s Public Investment Fund (PIF) has shown no interest so far in financing Tesla Inc CEO Elon Musk’s proposed \$72 billion deal to take the U.S. electric car maker private, despite acquiring a minority stake in the company this year, two sources familiar with the matter said.”⁶⁸
- An August 12, 2018 *Bloomberg* article reports: “[PIF] hasn’t made any firm decisions on whether to increase its stake, or by how much, but talks are ongoing It wasn’t immediately clear how much the fund would invest in Tesla.”⁶⁹

28. Dr. Hartzmark further states that the article revealed “that no one had seen or reviewed Musk’s August 7, 2018 tweet before he posted it indicating that no going private transaction was imminent.”⁷⁰ Once again, market participants were aware of this information prior to *The New York Times* article’s publication. For example:

- An August 7, 2018 *Associated Press Newswires* news article quotes John Coffee Jr., a Columbia University law professor and corporate-governance expert, as stating: “It’s very obvious that Musk did not talk to any lawyers before he made

⁶⁴ “Questions loom over Tesla deal after CEO reveals Saudi link,” *The Canadian Press*, August 13, 2018.

⁶⁵ “Tesla Board Surprised by Elon Musk’s Tweet on Taking Carmaker Private,” *The New York Times*, August 13, 2018.

⁶⁶ Hartzmark Report ¶ 125.

⁶⁷ “Musk Looks to Take Tesla Private --- Tweet on what would be a mammoth buyout surprises investors, drives stock up 11%,” *The Wall Street Journal*, August 8, 2018.

⁶⁸ “EXCLUSIVE-Saudi Arabia’s PIF has shown no interest in bankrolling Tesla buyout – sources,” *Reuters News*, August 11, 2018.

⁶⁹ “Tesla said to draw Saudi interest as board prepares to meet,” *Bloomberg News*, August 12, 2018.

⁷⁰ Hartzmark Report ¶ 125.

his tweet.”⁷¹

- An August 8, 2018 Bernstein analyst report states: “Given the haphazard process of disclosure last afternoon, our initial impression was that Elon Musk sprung his plan of going private upon the public without consulting Tesla’s board of directors or major shareholders.”⁷²
- An August 13, 2018 article in *The New York Times* titled “Tesla Board Surprised by Elon Musk’s Tweet on Taking Carmaker Private” states: “An abrupt tweet last week by Elon Musk about the prospect of taking Tesla private was dashed off with little forethought, and had not been cleared ahead of time with the company’s board, two people familiar with the chain of events said Monday.... A person with direct knowledge of the Tesla board’s thinking said some members of the board had been totally blindsided by Mr. Musk’s decision to air his plan on Twitter.”⁷³

29. The price decline on August 17, 2018 primarily relates to new information, and market participants’ concerns, about Mr. Musk’s physical and mental health over the past few months, which I understand is not alleged to have been misstated. For example, news articles and an analyst report cited by Dr. Hartzmark⁷⁴ attribute the stock price decline following the *New York Times* article to new information about Mr. Musk’s health rather than new information about the Musk Tweets:

- An August 17, 2018 *CNN Wire* news article states: “Tesla’s stock tumbled after CEO Elon Musk said he’s working himself to the bone and relies on Ambien to sleep.”⁷⁵
- An August 17, 2018 *Reuters News* article states: “Tesla Inc’s shares slumped 9 percent on Friday after Chief Executive Officer Elon Musk told the New York Times he was under major emotional stress and was preparing for ‘extreme torture’ from short sellers.”⁷⁶
- An August 17, 2018 Barclays analyst report states: “We’ll leave it to others to debate the psychology of Mr. Musk revealed in the lengthy NY Times interview that appears to have sent the shares sharply down today.”⁷⁷

⁷¹ “Tesla CEO’s buyout bid raises eyebrows, legal concerns,” *Associated Press Newswires*, August 7, 2018.

⁷² A.M. (Toni) Sacconaghi, Jr. “Tesla: Going private? Who knows... does Elon?,” Bernstein, August 8, 2018.

⁷³ “Tesla Board Surprised by Elon Musk’s Tweet on Taking Carmaker Private,” *The New York Times*, August 13, 2018.

⁷⁴ Hartzmark Report ¶¶ 128 & 132.

⁷⁵ “Tesla’s stock falls sharply after Elon Musk’s tearful interview,” *CNN Wire*, August 17, 2018.

⁷⁶ “Tesla stock sinks after Musk gives tearful NYT interview,” *Reuters News*, August 17, 2018.

⁷⁷ Brian A. Johnson, “Potential for a COO: Good for the company, but won’t help the stock,” Barclays, August 17, 2018.

30. Moreover, Dr. Hartzmark’s opinion that it is reasonable and appropriate to consider the entire Class Period as the relevant event window is in part dependent on his finding that the stock price decline from August 7, 2018 to August 17, 2018 is statistically significant.⁷⁸ However, after appropriately excluding the decline on August 17, 2018, his own analysis finds that the cumulative abnormal stock price decline from August 7, 2018 to August 16, 2018 is not statistically significant.⁷⁹ Consequently, once corrected for his mistaken focus on *The New York Times* article, Dr. Hartzmark’s empirical basis for his use of the entire Class Period to measure alleged artificial inflation fails to support his opinion.

31. Finally, Dr. Hartzmark’s mistaken focus on *The New York Times* article also impacts his fundamentally flawed and unreliable analysis of purported Direct Artificial Inflation in two additional ways. First, he assumes that Direct Artificial Inflation fell to \$0 on August 17, 2018 despite his failure to establish that any new information related to the alleged misstatements in the Musk Tweets was disclosed on this date.

32. Second, Dr. Hartzmark ignores that the impact of the information in *The New York Times* article on implied volatility in Tesla’s stock price – i.e., the metric he uses to allocate a portion of his estimate of Direct Artificial Inflation to each date during the Corrective Interval – demonstrates that his allocation is incorrect. To see why, note that he assumes that Tesla “options prices and implied volatility reflected the probability of the deal being completed” but did not reflect any other information during the Corrective Interval such that he can “isolate the

⁷⁸ Hartzmark Report ¶ 65.

⁷⁹ The confidence level is calculated based on a *t*-statistic that is calculated by dividing the cumulative abnormal return by the product of: (i) the daily standard error of the market model regression; and (ii) the square root of 7 (the number of trading days). Hartzmark Report ¶ 65 n.88. The cumulative abnormal return estimated between August 8, 2018 and August 16, 2018 is equal to -9.31%. *Id.* Table 4. The *t*-statistic for the cumulative abnormal return estimated between August 8, 2018 and August 16, 2018 is equal to -1.38 (-1.38% = -9.31 / 0.0255 x $\sqrt{7}$), which corresponds to a p-value of 17.1% and is below Dr. Hartzmark’s threshold for statistical significance. *See supra* ¶ 10 n.12; Hartzmark Report workbook “App 5 7, TBL 1 4 5 7 8 9.xlsx” tab “Regression.”

changing price impact directly related to the Musk Tweets (as opposed to the *consequential effects*) via the changing long-term option implied volatility.”⁸⁰ But the largest change in daily implied volatility occurred on August 17, 2018⁸¹ even though there is no connection to the alleged misstatements in the Musk Tweets, demonstrating that implied volatility was affected by factors unrelated to the alleged misstatements during the Corrective Interval, contrary to Dr. Hartzmark’s assumption.⁸² Consequently, he has no reliable method to allocate purported Direct Artificial Inflation across the Corrective Interval.

E. There Is Substantial Uncertainty about Whether Short Sellers Made or Lost Money, or Would Have Lost Money Anyway

33. Plaintiff alleges that “Musk’s false and materially misleading statements on August 7, 2018 were part of his efforts to harm short sellers of Tesla stock.”⁸³ However, Dr. Hartzmark devotes only two paragraphs and less than half a page of his 276-paragraph and 169-page report to a discussion of alleged damages for short sellers. This is not surprising because there is substantial uncertainty about whether short sellers made or lost money, or would have lost money anyway.⁸⁴

34. In fact, short sellers, including some who publicly expressed very negative views of Tesla before the Class Period began, experienced mark-to-market gains and increased their short positions during the Class Period. For example, a report published on August 20, 2018 by S3 Analytics states:

⁸⁰ Hartzmark Report ¶¶ 188 & 191 (emphasis in original).

⁸¹ Hartzmark Report Table 8 shows that implied volatility increased by almost 8 percent on August 17, 2018, the largest change during the Corrective Interval.

⁸² It is also nonsensical to opine that implied volatility was impacted solely by the \$23.27 “direct effect” of the alleged fraud but not at all by the \$43.40 “consequential effect,” which represents almost two-thirds of the total \$66.67 price decline that Dr. Hartzmark attributes to the alleged fraud, because stock prices are an input in the calculation of implied volatility.

⁸³ Complaint ¶ 157.

⁸⁴ If the “Consequential Harm” allegedly caused by the Musk Tweets was “foreseeable” as Dr. Hartzmark opines, there would have been no reason for short sellers to close their positions above the pre-Tweet price because they would have expected to benefit when the price declined. Hartzmark Report ¶¶ 4 & 33.

On August 7th “The Tweet”, which started the “taking Tesla private” frenzy, added \$6.4 billion to Tesla’s market cap and cost short sellers \$1.3 billion in mark-to-market losses. Unfortunately for Elon Musk and the scores of Tesla retail and institutional long shareholders, the anticipated short squeeze resulting from Tesla’s march to \$420/share never materialized. Since The Tweet, Tesla’s stock price has retreated over -19%, slicing over \$12 billion from Tesla’s market cap and generating \$2.5 billion in mark-to-market profits for the short sellers who had stayed in their trades. Tesla continues to be the largest equity short in the U.S. with \$11.2 billion of short interest, 33.4 million shares shorted, or 26.20% of its float. Tesla has held the top spot in the U.S., with only a few interruptions since 2016.... While there has been some short covering since The Tweet, Elon Musk was only able to drive away less than 4% of his short sellers. Shorts have only covered 1.3 million shares since Tesla’s original stock price spike, hardly a short squeeze and more likely an exit by shorter term momentum short sellers and fat trimming by the lesser capitalized long-term short sellers. In actuality, many of the longer-term short sellers have backed up their bets and slightly increased their short exposure over the last week.⁸⁵

Indeed, vocal Tesla critic Jim Chanos disclosed that he sold more shares short as Tesla’s stock price rallied following the Musk Tweets, and Greenlight Capital (run by another well-known Tesla short seller, David Einhorn⁸⁶), stated in its October 5, 2018 letter to investors that “[o]ur Tesla short was our second biggest winner during the quarter.”⁸⁷

35. There is also uncertainty about whether short sellers would have lost money anyway. As explained *supra* ¶ 13, had Mr. Musk tweeted that he was considering taking Tesla private at \$420 per share without making any alleged misstatements, it is reasonable to believe that the Company’s stock price still would have increased; indeed, Dr. Hartzmark opines the price increased when news of the PIF investment – which did not even include a potential proposal – was made public.⁸⁸ Consequently, it is reasonable to believe that short sellers who closed their positions above the pre-Tweet price would have incurred at least a portion of their losses under Plaintiff’s theory had the alleged fraud not occurred.

⁸⁵ “No Tesla Short Squeeze, Shorts up \$1.2 billion since ‘The Tweet,’” S3 Analytics, August 20, 2018.

⁸⁶ See, e.g., “Elon Musk Versus the Haters,” *Institutional Investor*, October 2, 2017.

⁸⁷ “How Jim Chanos Uses Cynicism Chutzpah—and a Secret Twitter Account—to take on Markets (and Elon Musk),” *Institutional Investor*, September 17, 2018; Greenlight Investor letter dated October 5, 2018.

⁸⁸ Hartzmark Report ¶ 76.

36. Moreover, short sellers who initially closed their positions during the Class Period at a loss but opened new short positions during the Class Period, or otherwise received gains from the alleged fraud under Dr. Hartzmark's calculations, may have on net benefited from their transactions during the Class Period. Dr. Hartzmark fails to acknowledge that Class members' purported losses should be offset by any gains under his own calculations, which applies across each Class member's transactions in Tesla securities during the Class Period.

F. Dr. Hartzmark's Estimates of Alleged Damages for Tesla's Notes Are Fundamentally Flawed Because He Uses Unreliable Price Data that Overstate Alleged Artificial Inflation Under his Own Analysis

37. To estimate alleged artificial inflation for Tesla's Notes, Dr. Hartzmark relies on "Bloomberg evaluated prices" or "BVAL prices," which are prices estimated using "market observations from a wealth of contributed resources."⁸⁹ In other words, BVAL prices are not actual transaction prices.

38. During the Class Period, BVAL prices for the Tesla Notes differed from actual transaction prices. In particular, the BVAL prices on August 7, 2018 for each of Tesla's Notes are *higher than every single price* at which a transaction actually occurred on that day.⁹⁰ Moreover, the cumulative abnormal returns based on Dr. Hartzmark's regression analyses for the Tesla Notes from August 7, 2018 through August 17, 2018 are more negative when using BVAL prices rather than the daily volume-weighted average of the actual transaction prices ("VWAPs"), an alternative price series that Dr. Hartzmark calculated but does not use to

⁸⁹ Hartzmark Report ¶ 268 n.379 ("Bloomberg's BVAL Evaluated Pricing Service provides transparent and highly defensible prices across the liquidity spectrum for a variety of fixed income securities The key to BVAL's methodology is its real-time access to market observations from a wealth of contributed sources. The accumulated mass of market data serves as the main driver of an innovative and quantitative approach that first corroborates market levels on actively traded bonds and then derives a comparable relative value price on those securities that are less liquid.' Source: Bloomberg.'").

⁹⁰ Hartzmark Report Table 12 & Appendix 13 (BVAL prices for Tesla's 2019, 2021 and 2022 Notes are \$114.69, \$122.55, and \$130.41, respectively, while the actual trading data from TRACE that Dr. Hartzmark reports show that the highest transaction prices on August 7, 2018 for these Notes are \$114.612, \$121.124, and \$129.675, respectively).

estimate total alleged artificial inflation. *See Exhibit 2*. For example, the cumulative abnormal decline over this period for the 2021 Note based on the BVAL prices is *42% higher* than the cumulative abnormal decline based on Dr. Hartzmark’ analysis of the VWAPs. *See id.* Consequently, his estimates of total alleged artificial inflation are substantially higher using the BVAL prices he employs, demonstrating an upward bias in his analysis of alleged damages.

III. NEITHER PROFESSOR MITTS NOR PROFESSOR SUBRAMANIAN ADDRESS WHAT IS IN DISPUTE IN THIS CASE

A. Professor Mitts

39. Professor Mitts’ principal opinions are that: 1) short selling can benefit securities markets; 2) short selling is costly; and 3) price increases harm short sellers.⁹¹ None of these issues are in dispute in this matter.

40. As explained *supra* § II.E., there is substantial uncertainty about whether short sellers made or lost money, or would have lost money anyway, and Professor Mitts provides nothing to dispute this point. Rather than quantifying actual harm, he vaguely opines that “[t]he injury to short sellers was an obvious and an unavoidable consequence of Musk’s alleged misstatements” and that “[i]t was precisely short sellers like Chanos who held open sustained, long-run short positions who would suffer the most from an increase in Tesla’s share price.”⁹² While it is true that short sellers like Mr. Chanos would suffer the most from a lengthy increase in Tesla’s share price – such as the more than fifteen-fold price increase since Mr. Musk withdrew his proposal⁹³ – Professor Mitts ignores both that the price fell below the pre-Tweet price within two days and so did not impact “sustained, long-run short positions,” and that short

⁹¹ Mitts Report ¶ 11. Professor Mitts acknowledges that “short positions can also play a role in fraudulent or manipulative trading schemes” and that “[r]egardless of the merits of a short seller’s allegations, it may take some time for a company to rebuild shareholder confidence when the publication of allegations is accompanied by a substantial share-price decline.” *Id.* ¶¶ 62 & 64.

⁹² Mitts Report ¶¶ 11 & 138.

⁹³ Fischel Report ¶ 19.

sellers like Mr. Chanos increased their short positions during the Class Period and made rather than lost money.⁹⁴

B. Professor Subramanian

41. Professor Subramanian also does not address what is in dispute in this case. He opines that Mr. Musk’s proposal was atypical and “an extreme outlier compared to all other MBO transactions announced since 2010,” including by being “incomplete” and “highly preliminary.”⁹⁵ But market participants clearly understood this during the Class Period, as explained above.

42. According to Professor Subramanian, an MBO “is a transaction in which senior managers buy out the other shareholders,”⁹⁶ but such a transaction is fundamentally different from Mr. Musk’s proposal. First, rather than buying out the other shareholders, Mr. Musk professed his “hope [that] all shareholders remain.”⁹⁷ Second, Mr. Musk explicitly stated that his aim was not to increase his stake: “this has nothing to do with accumulating control for myself. I own about 20% of the company now, and I don’t envision that being substantially different after any deal is completed.”⁹⁸ Third, Mr. Musk explained that “most of the capital required for

⁹⁴ See *supra* ¶¶ 34 & n.87. Professor Mitts also opines the small reduction in short positions that was noted by S3 Analytics (*see supra* ¶ 34) “is an indication that short sellers sought to avoid incurring the additional borrowing costs that, in all likelihood, would have arisen if these positions were held open,” ignoring that if the consensus among short sellers was that the price would remain elevated “in all likelihood,” then substantially more short sellers would have reduced their positions. Mitts Report ¶ 159 n.229. Professor Mitts also claims that “data from the securities lending market indicates that Musk’s tweet began to increase the costs of short selling,” simply citing (1) the number of shares returned to lenders, (2) the decline in volume of open short positions, and (3) the decline in volume of shares available for lending over various days immediately prior and subsequent to August 7, 2018, twice including August 6, 2018 which could not have been affected by the Musk Tweets. *Id.* ¶ 159. But he fails to put the changes on August 7, 2018 (the only day during the Class Period that the price was increasing) into context to demonstrate that they are unusual and, even if he was able to show these changes on this date were unusual, he cannot account for the effect of the positive confounding news of PIF’s investment that occurred prior to the Musk Tweets because his data are daily, not intraday.

⁹⁵ Subramanian Report ¶ 37. I note that Plaintiff did not provide Professor Subramanian’s backup until December 7, 2021, the day before this report was served.

⁹⁶ Subramanian Report ¶ 39.

⁹⁷ Fischel Report ¶ 19.

⁹⁸ “Taking Tesla Private,” August 7, 2018, <https://www.tesla.com/blog/taking-tesla-private>.

going private would be funded by equity rather than debt, meaning that this would not be like a standard leveraged buyout structure commonly used when companies are taken private.”⁹⁹ Fourth, unlike the proposals Professor Subramanian describes, Mr. Musk’s proposal was presented – and received by market participants – as incomplete and uncertain.¹⁰⁰ Given that Mr. Musk’s proposal was substantially different from the typical MBO, it is unsurprising that it was, as Professor Subramanian opines, “an extreme outlier.”



Daniel R. Fischel

December 8, 2021

⁹⁹ “Update on Taking Tesla Private,” August 13, 2018, <https://www.tesla.com/blog/update-taking-tesla-private>.

¹⁰⁰ *See supra* § II.B.

Appendix A

DANIEL R. FISCHEL

Business Address:

December 2021

Compass Lexecon
332 South Michigan Avenue
Chicago, Illinois 60604
Tel: 312-322-0209
dfischel@compasslexecon.com

PROFESSIONAL EXPERIENCE

Lee and Brenna Freeman Professor of Law and Business, University of Chicago Law School (1/84 – 12/2005, chair awarded in 7/89, emeritus as of 1/1/2006); Dean of Law School (1/99 – 2/01); Visiting Professor of Law, University of Chicago Law School (7/82 - 6/83).

Professor of Law and Business, Northwestern University School of Law (1/1/2006 – 5/2011). Professor, Kellogg School of Management (courtesy appointment, 1/1/2006 – 5/2011).

Jack N. Pritzker Distinguished Visiting Professor of Law, Northwestern University School of Law (6/02-6/03).

Professor of Law and Business, University of Chicago Graduate School of Business (7/87 - 6/90).

Director, Law and Economics Program, University of Chicago (1/84 - 6/91).

Assistant Professor of Law, Northwestern University School of Law (6/80 - 6/81); Associate Professor of Law, Northwestern University School of Law (6/81 - 6/82); promoted to full professor in 6/82.

Attorney with Levy and Erens, Chicago, Illinois (7/79 - 6/80).

Law Clerk for Associate Justice Potter Stewart of the United States Supreme Court (1978 - 1979).

Law Clerk for Judge Thomas E. Fairchild, Chief Judge of the Seventh Circuit Court of Appeals (1977 - 1978).

CONSULTING EXPERIENCE

President and Chairman, Compass Lexecon (formerly Lexecon).

AREAS OF SPECIALIZATION

Securities and Financial Markets, Valuation and Financial Analysis, Bankruptcy and Financial Distress Litigation, ERISA Litigation, Class Certification, Damages, Corporate Governance.

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EDUCATION

University of Chicago Law School, Chicago, Illinois; J.D. 1977, cum laude; Order of the Coif; Comment Editor, Vol. 44, University of Chicago Law Review; Approximately top 1% of the Class. Awarded Casper Platt Award for best paper written by a student of the University of Chicago Law School; awarded Jerome N. Frank Prize for excellence in legal writing while a member of the University of Chicago Law Review, 1975 - 1977. Studied law and economics with Richard Posner and other members of the faculty.

Brown University, Providence, Rhode Island; M.A. 1974 in American History.

Cornell University, Ithaca, New York; major-American History; minor-Economics; B.A. 1972

TESTIMONY

Deposition of Daniel R. Fischel In Re: Oracle Corporation Derivative Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 2017-0337-SG, (December 8, 2021).

Deposition of Daniel R. Fischel In Re: Straight Path Communications Inc. Consolidated Stockholder Litigation, In the Court of Chancery of the State of Delaware, C.A. No. 2017-0486-SG, (October 21, 2021).

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Deposition of Daniel R. Fischel In Re: Sjunde Ap-Fonden, et al. vs. General Electric, et al., In the United States District Court, Southern District of New York, Index No. 17-cv-08457 (JMF), (August 9, 2021).

Testimony of Daniel R. Fischel In Re: United States of America vs. Edward Bases and John Pacilio, In the United States District Court, Northern District of Illinois, Eastern Division, Docket No. 18 CR 48, (July 29, 2021).

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Testimony of Daniel R. Fischel In Re: Resolution Life L.P. and Resolution Life (Parallel) Partnership vs. GBIG Holdings, Inc. f/k/a Southland National Holdings, Inc.; SNH Acquisition, LLC and Greg Lindberg, In the Supreme Court of the State of New York, Civil Division, Index Nos. 650575/19, 653258/19, (April 19, 2021).

Deposition of Daniel R. Fischel In Re: Matthew Sciabacucchi and Hialeah Employees' Retirement System vs. John Malone, et al., and Charter Communications, Inc., In the Court of Chancery for the State of Delaware, C.A. No. 11418-VCG, (April 16, 2021).

Deposition of Daniel R. Fischel In Re: Jeld-Wen Holdings, Inc. Securities Litigation, In the United States District Court for The Eastern District of Virginia, Richmond Division, Civil Action No. 3:20-cv-00112-JAG, (February 26, 2021).

Testimony of Daniel R. Fischel In Re: The Pacific Gas and Electric Company Administration of Stress Test Methodology Developed Pursuant to Public Utilities Code Section 451.2(b) and (2) Determination That \$7.5 Billion of 2017 Catastrophic Wildfire Costs and Expenses Are Stress Test Costs That May Be Financed Through Issuance of Recovery Bonds Pursuant to Section 451.2(c) and Section 850 et Seq.(U39E), Before the Public Utilities Commission of the State of California, Application No. 20-04-023, (December 15, 2020).

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Deposition of Daniel R. Fischel In Re: SH 130 Concession Company, LLC, Zachry Toll Road – 56 LP Cintra Texas 56 LLC et al. vs. Central Texas Highway Constructors, LLC, et al., In the United States Bankruptcy Court, Western District of Texas, Austin Division, Case No. 16-10262-TMD, Adversary No. 18-01030, (November 5, 2020).

Deposition of Daniel R. Fischel In Re: Ahmed D. Hussein versus Sheldon Razin, Steven Plochocki, Quality Systems, Inc., et al., In the Superior Court of the State of California, County of Orange, Case No. 302013-00679600 CUNPCJC, (October 22, 2020).

Deposition of Daniel R. Fischel In Re: Deutsche Bank National Trust Company, Solely in its Capacity as Trustee of the Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-9, In the Supreme Court of the State of New York County of New York, Index No. 654208/2018 (September 25, 2020).

Testimony of Daniel R. Fischel In Re: Fairstone Financial Holdings Inc., J.C. Flowers IV L.P. and VP Canada Acquisition, L.P. vs. Duo Bank of Canada, Court File No. CV-20-00641857-00CL and Duo Bank of Canada vs. Fairstone Financial Holdings Inc., J.C. Flowers IV L.P. and VP Canada Acquisition, L.P., Court File No. CV-20-00643629-00CL, In the Ontario Superior Court of Justice, (September 11, 2020).

Testimony of Daniel R. Fischel In Re: AB Stable VIII LLC vs. Maps Hotels and Resorts One LLC, et al., In the Court of Chancery of the State of Delaware, C. A. No. 2020-0310-JTL (August 28, 2020).

Deposition of Daniel R. Fischel In Re: AB Stable VIII LLC vs. Maps Hotels and Resorts One LLC, et al., In the Court of Chancery of the State of Delaware, Case No. 2020-0130-JTL (August 14, 2020).

Deposition of Daniel R. Fischel In Re: Willis Towers Watson PLC Proxy Litigation, In the United States District Court for the Eastern District of Virginia, Alexandria Division, Master File No. 1:17-cv-1338-AJT-JFA (August 12, 2020).

Deposition of Daniel R. Fischel In Re: Forescout Technologies, Inc. et al. vs. Ferrari Group Holdings, LP, and Ferrari Merger Sub, Inc., et al., In the Court of Chancery of the State of Delaware, Civil Action No. 2020-0385-SG (July 13, 2020).

Deposition of Daniel R. Fischel In Re: Brigade Leveraged Capital Structures Fund Ltd. et al. vs. Kindred Healthcare, Inc., et al., In the Circuit Court of Chancery of the State of Delaware, Case No. 2018 0165 (February 5, 2020).

Testimony of Daniel R. Fischel In Re: Gannaway Entertainment, Inc. et al vs. Frankly Inc. et al., In the United States District Court, Northern District of California, San Francisco Division, Case No. 3:17-cv-04169-RS (December 17, 2019).

Deposition of Daniel R. Fischel In Re: The Official Committee of Unsecured Creditors of Allied Systems Holdings, Inc. and its affiliated debtors et al. v. Yucaipa, et al., In the U.S. Bankruptcy Court for the District of Delaware, Bankr., D. Del., Proc. Nos. 13-50530-KBO, 14-50971-KBO (December 16, 2019).

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Deposition of Daniel R. Fischel In Re: Lindie L. Banks and Erica LeBlanc, individually and on behalf of all others similarly situated vs. Northern Trust Corporation and Northern Trust Company, In the United States District Court, Central District of California, Case No. 2: 16-cv-09141-JFK (JCx) (November 22, 2019).

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Deposition of Daniel R. Fischel In Re: American Realty Capital Properties, Inc. Litigation, In the United States District Court, Southern District of New York, Civil Action No. 1:15-mc-00040-AKH Class Action (July 25, 2019).

Deposition of Daniel R. Fischel In Re: Rajesh M. Shah, et al vs. Zimmer Biomet Holdings, Inc., et al., In the United States District Court, Northern District of Indiana, South Bend Division, Case No. 3:16-cv-815-PPS-MGG (May 17, 2019).

Testimony of Daniel R. Fischel In Re: Colonial Chevrolet Co., Inc., et al., Alley's of Kingsport, Inc., et al., and Union Dodge, Inc., et al. vs. The United States (Nos. 10-647C, 11-100C, and 12-900L – Consolidated), In the United States Court of Federal Claims (May 8, 2019).

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Deposition of Daniel R. Fischel In Re: Nine West holdings, Inc., et al., Debtors, United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 18-10947 (SCC) (January 16, 2019).

Deposition of Daniel R. Fischel In Re: Sandisk LLC Securities Litigation, United States District Court, Northern District of California, San Francisco Division, Case No. 3:15-cv-01455-VC (November 16, 2018).

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Testimony of Daniel R. Fischel In Re: United States of America, et al., vs. J-M Manufacturing Co., Inc., United States District Court, Central District of California – Western Division, No. CV 6-55 GW (November 5, 2018).

Deposition of Daniel R. Fischel In Re: Appraisal of Air Methods Corp., In the Court of Chancery of the State of Delaware, C.A. No.: 2017-0317-JRS (September 27 and 28, 2018).

Testimony of Daniel R. Fischel In Re: Akorn, Inc., v. Fresenius Kabi, AG, et al., In the Court of Chancery of the State of Delaware, C.A. No. 2018-0300-JTL (July 13, 2018).

Deposition of Daniel R. Fischel In Re: Starz Stockholder Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 12584-VCG (July 12, 2018).

Deposition of Daniel R. Fischel In Re: Akorn, Inc. vs. Fresenius Kabi AG, Quercus Acquisition, Inc. and Fresenius SE & Co. KGaA, In the Court of Chancery of the State of Delaware, Index No. 2018-0300 (June 30, 2018).

Deposition of Daniel R. Fischel In Re: Physiotherapy Holdings, Inc., et al., Debtors; PAH Litigation Trust v. Water Street Healthcare Partners, L.P., et al., In the United States Bankruptcy Court for the District of Delaware, Case No. 13-12965 (KG) (Jointly Administered) (June 5, 2018).

Deposition of Daniel R. Fischel In Re: Facebook, Inc. Class C Reclassification Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 12286-VCL (May 18, 2018).

Testimony of Daniel R. Fischel In Re: Dr. Alan Sacerdote, et al. vs. New York University, In the United States District Court for the Southern District of New York, Civil Action No. 1:16-cv-6284-KBF (April 24, 25 and 26).

Deposition of Daniel R. Fischel In Re: Daniel Turocy, et al. vs. El Pollo Loco Holdings, Inc., et al., In the United States District Court, Central District of California, Southern Division, Case No. 8:15-cv-01343-DOC-KES

(April 12, 2018).

Deposition of Daniel R. Fischel In Re: United States of America v. AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc., In the United States District Court for the District of Columbia, Case No. 1:17-cv-02511-RJL (March 9, 2018).

Deposition of Daniel R. Fischel In Re: Dr. Alan Sacerdote, et al. vs. New York University, In the United States District Court for the Southern District of New York, Civil Action No. 1:16-cv-6284-KBF (March 1, 2018).

Testimony of Daniel R. Fischel In Re: Lehman Brothers Holdings Inc., et al., In the United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No. 08-13555 (SCC) (December 4, 2017).

Deposition of Daniel R. Fischel In Re: Lehman Brothers Holdings Inc., et al., In the United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No. 08-13555 (SCC) (October 17, 2017).

Testimony of Daniel R. Fischel In Re: Genon Energy, Inc., et al. Debtors, In the United States Bankruptcy Court for the Southern District of Texas Houston Division, Chapter 11, Case No. 17-33695 (DRJ) (October 6, 2017).

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Deposition of Daniel R. Fischel In Re: United States ex re. Hendrix et al., vs. JM Manufacturing Company, Inc., et al., In the United States District Court, Central District of California, Case No. ED CV 06-00055-GW (July 20, 2017).

Testimony of Daniel R. Fischel In Re: Saguaro Power Co. v. Pioneer Americas LLC d/b/a Olin Chlor Alkali Products, In AAA Case No. 01-16-0005-1073 (June 30, 2017).

Testimony of Daniel R. Fischel In Re: Syngenta AG MIR 162 Corn Litigation, In the United States District Court for the District of Kansas, Master File No. 2:14-MD-02591-JWL-JPO (June 19, 2017).

Testimony of Daniel R. Fischel In Re: Motors Liquidation Company, f/k/a General Motors Corporation, et al., Debtors, United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No.:09-50026 (MG) and Motors Liquidation Company Avoidance Action Trust, et al vs. JPMorgan Chase Bank, N.A., et al., United States Bankruptcy Court, Southern District of New York, Case No.: 09-00504 (MG) (May 2 and 3, 2017).

Deposition of Daniel R. Fischel In Re: Alere-Abbott Merger Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 12963-VCG (April 4, 2017).

Testimony of Daniel R. Fischel In Re: Appraisal of AOL Inc., In the Court of Chancery of the State of Delaware, Consol C.A. No. 11204-VCG (March 20, 2017).

Deposition of Daniel R. Fischel In Re: City of Daytona Beach Policy and Fire Pension Fund, et al vs. Examworks Group, Inc., et al., In the Court of Chancery of the State of Delaware, C.A. No. 12481-VCL (February 22, 2017).

Deposition of Daniel R. Fischel In Re: Appraisal of AOL Inc., In the Court of Chancery of the State of Delaware, Consol C.A. No. 11204-VCG (February 14 and 15, 2017).

Deposition of Daniel R. Fischel In Re: Motors Liquidation Company, f/k/a General Motors Corporation, et al., Debtors, United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No.:09-50026 (MG) and Motors Liquidation Company Avoidance Action Trust, et al vs. JPMorgan Chase Bank, N.A., et al., United States Bankruptcy Court, Southern District of New York, Case No.: 09-00504 (MG) (January 31, 2017).

Deposition of Daniel R. Fischel In Re: Syngenta Litigation, In the State of Minnesota District Court, County of Hennepin Fourth Judicial District, Court File No. 27-CV-15-3785 and In Re: Syngenta AG MIR 162 Corn Litigation, In the United States District Court for the District of Kansas, Case No. 2:14-md-2591-JWL-JPO (January 20, 2017).

Testimony of Daniel R. Fischel In the Matter of Motiva Enterprises LLC vs. Bechtel Corporation, Jacobs Engineering Group, Inc. and Bechtel-Jacobs CEP Port Arthur Joint Venture, International Institute for Conflict Prevention and Resolution (October 20, 2016).

Deposition of Daniel R. Fischel in Beaver County Employees Retirement Fund, et al., vs. Cyan, Inc., et al. Superior Court of the State of California, County of San Francisco, Lead Case No. CGC-14-538355 (Consolidated with No. CGC-14-539008) (October 11, 2016).

Testimony of Daniel R. Fischel In Re: Paragon Offshore PLC, et al, Debtors, In the United States Bankruptcy Court, District of Delaware, Case No. 16-10386 (September 23, 2016).

Deposition of Daniel R. Fischel In the Matter of Motiva Enterprises LLC vs. Bechtel Corporation, Jacobs Engineering Group, Inc. and Bechtel-Jacobs CEP Port Arthur Joint Venture, International Institute for Conflict Prevention and Resolution (August 25, 2016)

Deposition of Daniel R. Fischel In Re: Syngenta AG MIR162 Corn Litigation, In the United States District Court for the District of Kansas; Case No. 2:14-MD-02591-JWL-JPO and In Re: Syngenta Litigation, In the State of Minnesota District Court, County of Hennepin, Fourth Judicial District, Case No. 27-CV-15-385 (August 11, 2016).

Deposition of Daniel R. Fischel in The Western and Southern Life Insurance Company vs. The Bank of New York Mellon, Court of Common Pleas, Hamilton County, Ohio, Case No. A 1302490 (July 27, 2016).

Testimony of Daniel R. Fischel in Herbalife, Ltd., vs. KPMG LLP, Non-Administered Arbitration of the International Institute for Conflict Prevention and Resolution, CPR Case No. 1100076998 (May 19, 2016).

Testimony of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. vs. Benefit Street Partners, et al., In the District Court of Bexar County, Texas, Cause No. 2016 CI 04006 (May 17, 2016).

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Testimony of Daniel R. Fischel in U.S. Commodity Futures Trading Commission v. Igor B. Oystacher and 3 Red Trading, LLC, In the United States District Court for the Northern District of Illinois, Eastern Division, Docket No. 15 C 9196 (May 6, 2016).

Testimony of Daniel R. Fischel in Merion Capital LP and Merion Capital II, LP vs. Lender Processing Services, Inc., In the Court of Chancery of the State of Delaware, C.A. No. 9320-VCL (May 4 and 5, 2016).

Testimony of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. v. Benefit Street Partners LLC, et al., In the District Court of Bexar County, Texas, 285th Judicial District, Cause No. 2016-CI 04006 (April 5, 2016).

Deposition of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. v. Benefit Street Partners LLC, et al., In the District Court of Bexar County, Texas, 285th Judicial District, Cause No. 2016-CI 04006 (April 2, 2016).

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Deposition of Daniel R. Fischel in U.S. Commodity Futures Trading Commission v. Igor B. Oystacher and 3 Red Trading, LLC, In the United States District Court, Northern District of Illinois, Eastern Division, No. 15-cv-09196 (March 25, 2016).

Deposition of Daniel R. Fischel in Merion Capital LP and Merion Capital II, LP vs. Lender Processing Services, Inc., In the Court of Chancery of the State of Delaware, C.A. No. 9320-VCL (March 15, 2016).

Deposition of Daniel R. Fischel in Lawrence E. Jaffe Pension Plan, On Behalf of Itself and All Others Similarly Situated v. Household International, Inc., et al., In the United States District Court, Northern District of Illinois Eastern Division, Lead Case No. 02-C-5893 (February 24, 2016).

Deposition of Daniel R. Fischel in Robert E. Morley, Jr. and REM Holdings 3, LLC vs. Square, Inc., Jack Dorsey, and James McKelvey, Jr., United States District Court for the Eastern District of Missouri, Eastern Division, Civil Action No. 14-CV-00172-SNLJ (February 19, 2016).

Testimony of Daniel R. Fischel In the Matter of the Application of U.S. Bank National Association, The Bank of New York Mellon, et al., Supreme Court of the State of New York, County of New York, Index No. 652382/2014 (January 20 and 21, 2016).

Testimony of Daniel R. Fischel in Sangeeth Peruri v. Ameriprise Financial, Inc., et al, American Arbitration Association Case No. 01-15-0002-3991 (December 7, 2015).

Deposition of Daniel R. Fischel In the Matter of the Application of U.S. Bank National Association, The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., et al., In the Supreme Court of the State of New York, County of New York, Index No. 652382/2014 (December 3, 2015).

Testimony of Daniel R. Fischel in Securities and Exchange Commission v. Arkadiy Dubovoy, et al, In the United States District Court for the District of New Jersey, Civil Case No. 15-cv- 6076-MCA (October 8, 2015).

Deposition of Daniel R. Fischel in Steven A. Stender, Harold Silver and Infinity Clark Street Operating, L.L.C., on behalf of themselves and all others similarly situated v. Archstone- Smith Operating Trust, et al., in the United States District Court for the District of Colorado, Case No. 07-CV-02503-WJM-MJW (July 24, 2015).

Testimony of Daniel R. Fischel In Re: Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (Web IV), in the United States Copyright Royalty Judges, The Library of Congress, Docket No. 14-CRB-0001-WR (2016-2020) (May 21 and 22, 2015).

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Deposition of Daniel R. Fischel in MacDermid, Incorporated vs. Cookson Group, PLC, Cookson Electronics and Enthon, Inc., in the Superior Court, Judicial District of Waterbury, Docket No. UWY-CV-12-6016356-S (January 21, 2015)

Testimony of Daniel R. Fischel in the Securities and Exchange Commission vs. Samuel E. Wyly and Donald R. Miller, Jr., in his capacity as the Independent Executor of the Will and Estate of Charles J. Wyly, Jr., in the United States District Court, Southern District of New York, 10 Civ. 5760 (SAS) (November 17, 2014).

Deposition of Daniel R. Fischel In Re: Activision Blizzard, Inc. Stockholder Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 8885-VCL (October 17, 2014).

Testimony of Daniel R. Fischel in Hugh M. Caperton, Harman Development Corporation, Harman Mining Corporation, and Sovereign Coal Sales, Inc. v. A.T. Massey Coal Company, Inc., In the Circuit Court for Buchanan County, Case No. 027CL10000771-00 (May 20 and 21, 2014).

Deposition of Daniel R. Fischel in Center Partners, Ltd., et al v. Urban Shopping Centers, L.P., et al., In the Circuit Court of Cook County, Illinois, County Department, Law Division, Case No. 04 L 012194 (April 24, 2014).

Deposition of Daniel R. Fischel in Third Point LLC v. William F. Ruprecht, et al and Sotheby's, In the Court of Chancery of the State of Delaware, C.A. No. 9469-VCP (April 19, 2014).

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Buchanan County, Case No. 027CL10000771-00 (March 14, 2014).

Deposition of Daniel R. Fischel in Corre Opportunities Fund, LP, Zazove Associates LLC, DJD Group LLLP, First Derivative Traders LP, and Kevan A. Fight vs. Emmis Communications Corporation, United States District Court, Southern District of Indiana, Indianapolis Division, Case No. 1:12-cv-0491-SEB-TAB (October 4, 2013).

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Deposition of Daniel R. Fischel In Re: Irene Abrams, on behalf of herself and all others similarly situated v. Van Kampen Funds, Inc., Van Kampen Investment Advisory Corp., Van Kampen Prime Rate Income Trust, Howard Tiffen, Richard F. Powers III, Stephen L. Boyd, Dennis J. McDonnell and Jeffrey W. Maillet, in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 01-C-7538 (October 21, 2003).

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Deposition of Daniel R. Fischel In Re: McMahan & Company, Froley, Revy Investment Co., Inc. and Wechsler & Krumholz, Inc. v. Wherehouse Entertainment, Inc., Louis A. Kwiker, George A. Smith, Michael T. O'Kane, Lawrence K. Harris, et al., United States District Court, Southern District of New York, Index No. 88 Civ. 0321 (SS) (AJP), (July 16, 1996 and June 10, 1996).

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Deposition of Daniel R. Fischel In Re: Household Commercial Financial Services, Inc. a citizen of the states of Delaware and Illinois v. Julius Trump, a citizen of the State of Florida, Edmond Trump, a citizen of the state of Florida, James M. Jacobson, a citizen of the State of New York, and Parker, Chapin, Flattau & Klimpl, a citizen of the states of New York and New Jersey, in the United States District Court, for the Northern District of Illinois Eastern Division, 92 C 5010 (February 1, 1996).

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Deposition of Daniel R. Fischel In Re: Amos M. Ames, Helen M. Ames, Robert F. Bourke, Louise L. Bourke, Leo E. Corr, April C. Corr, Wence M. Horak, Ruth Horak, Robert T. Freas, Maurita Freas, Bruce Fink, Jr., William H. Jones, Candace A. Jones, Richard Paul, William L. Paul, Carole Paul, Steven J. Paul, Best Power Technology, Incorporated, and Best Power Technology Sales Corporation, in the State of Wisconsin, Circuit Court, Juneau County, Consolidated Case Nos. 92-CV-31, 92-CV-32 (January 26, 1993).

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Deposition of Daniel R. Fischel In Re: Jennifer A. Florin and Alan L. Mundt, on behalf of themselves and all others similarly situated v. Wesray Capital Corp., Citizens and Southern Trust Company, a subsidiary of Citizens and Southern Corporation, Robert K. Barton, Leonard S. Gaby, Allen G. Laco, Robert A. Magnusson, Anthony A. Saliture, Harlan B. Smith, Thomas F. Stutzman, Raymond G. Chambers, Frank E. Richardson, E. Burke Ross, Jr., William E. Simon and Frank W. Walsh, Jr., in the United States District Court, Western District of Wisconsin, Civil Action No. 91C-0948 (August 12, 1992).

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Deposition of Daniel R. Fischel In Re: Capital Bank of California v. Morgan Stanley & Co., Incorporated, United States District Court, Central District of California, No. 91-1650-R (January 24, 1992).

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Deposition of Daniel R. Fischel In Re: First Republicbank Securities Litigation, United States District Court, Northern District of Texas, Dallas Division, Civil Action No. 3-88-0641-H (January 2, and 3, 1992; November 26, 1991).

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Deposition of Daniel R. Fischel In Re: Jennie Farber on behalf of herself and all others similarly situated v. Public Service Company of New Mexico; Jerry D. Geist; John P. Bundrant and Albert J. Robison, United States District Court for the District of New Mexico, CIV 89-456 JB WWD (April 17 and 18, 1991).

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Deposition of Daniel R. Fischel In Re: Norman Kamerman, Shirley Brown, Edward Rosen, Lexim Investors Corp., and Dohsa Anstalt, on behalf of themselves and all others similarly situated, and Barnett Stepak v. Saul Steinberg, Reliance Group Holdings, Inc., Reliance Group, Inc., Reliance Financial Services corp., and Reliance Insurance Company, United States District Court, Southern District of New York, No. 84 Civ. 4440 (September 13, 1989).

Affidavit of Daniel R. Fischel In Re: Edward A. Taylor, et al. v. A. O. Smith Corporation et al., Circuit Court for Lincoln County, Tennessee, No. 098-84 (August 11, 1989).

Deposition of Daniel R. Fischel In Re: Container Products Inc. v. Pace Industries, United States District Court, Southern District of New York, No. 88-CIV. 3549 (KMW) (July 19, 1989).

Deposition of Daniel R. Fischel In Re: Joseph B. Moorman, et al. v. Southmark Corporation, et al., Liquidity Fund, et al. v. Southmark Corporation, et al., Superior Court of the State of California for the County of San Mateo, Nos. 322135 and 332435 (July 11, 1989).

Testimony of Daniel R. Fischel In Re: Tessie Wolfson, et al. v. Frederick S. Hammer, and Meritor Financial Group, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8471 (June 20, 1989).

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OTHER ACTIVITIES

Member, American Economic Association, American Finance Association.

Former Member of the Board of Overseers of the Becker-Friedman Institute at the University of Chicago.

Former Advisor to the Harvard Program on Corporate Governance at Harvard University. Former

Member, Board of Directors, Center for the Study of the Economy and the State. Former Member, Mid-America Institute Task Force on Stock Market Collapse.

Have acted as a consultant and/or advisor to the New York Stock Exchange, the National Association of Securities Dealers, the Chicago Board of Trade, the Chicago Board Options Exchange, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the Federal Trade Commission, the Department of Labor, the Securities and Exchange Commission, the Canadian Securities and Exchange Commission, the United States Department of Justice, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Housing Finance Agency, and the Office of Thrift Supervision.

Referee, Journal of Financial Economics, Journal of Law and Economics, Journal of Legal Studies.

Participant and speaker at multiple conferences on the Economics of Corporate, Securities and Commodities Law and the Regulation of Financial Markets.

Former Chairman, American Association of Law Schools' Section on Law and Economics.

Appendix B: Materials Relied Upon

Court Documents

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Data Sources

Calculated (or Derived) based on data from U.S. Stock and Index Database © 2021 Center for Research in Security Prices (CRSP), The University of Chicago Booth School of Business (“CRSP”)

Factset

Any other materials cited in the report

Exhibit 1
Probability of Deal Completion in Precedent Going Private Transactions¹
Calculated Using Dr. Hartzmark's Probability of Deal Completion Formula
August 7, 2008 - August 6, 2018

Target Company	Completed?	Announcement Date [A]	Unaffected Date [B]	Price Reaction Date [C]	Price on Unaffected Date \$/Share [D]	Price on Reaction Date \$/Share [E]	Offer Price \$/Share [F]	Probability of Deal Completion [G]
[1] IMS Health, Inc.	Yes	11/05/09	11/04/09	11/05/09	\$16.81	\$20.73	\$22.00	76%
[2] Novell, Inc. ²	No	03/02/10	03/02/10	03/03/10	\$4.75	\$6.08	\$5.75	133%
[3] Interactive Data Corp.	Yes	05/04/10	01/14/10	05/04/10	\$25.47	\$33.16	\$33.86	92%
[4] NBTY, Inc.	Yes	07/15/10	07/14/10	07/15/10	\$37.47	\$53.74	\$55.00	93%
[5] AmeriCredit Corp.	Yes	07/22/10	07/21/10	07/22/10	\$19.70	\$23.91	\$24.50	88%
[6] Pactiv LLC	Yes	08/17/10	05/14/10	08/17/10	\$23.97	\$32.58	\$33.25	93%
[7] Burger King Holdings, Inc.	Yes	09/02/10	08/31/10	09/02/10	\$16.45	\$23.59	\$24.00	95%
[8] The Gymboree Corp.	Yes	10/11/10	10/08/10	10/11/10	\$52.95	\$64.83	\$65.40	95%
[9] CommScope, Inc.	Yes	10/27/10	10/22/10	10/27/10	\$23.12	\$31.41	\$31.50	99%
[10] Syniverse Holdings, Inc.	Yes	10/28/10	10/27/10	10/28/10	\$23.79	\$30.50	\$31.00	93%
[11] Novell, Inc.	Yes	11/22/10	11/19/10	11/22/10	\$5.59	\$5.96	\$6.10	73%
[12] J. Crew Group, Inc.	Yes	11/23/10	11/22/10	11/23/10	\$37.65	\$43.99	\$43.50	108%
[13] Del Monte Foods Co.	Yes	11/25/10	11/18/10	11/26/10	\$15.71	\$18.80	\$19.00	94%
[14] Jo-Ann Stores LLC	Yes	12/23/10	12/22/10	12/23/10	\$45.63	\$60.19	\$61.00	95%
[15] Emergency Medical Services Corp.	Yes	02/14/11	02/11/11	02/14/11	\$70.66	\$62.92	\$64.00	116%
[16] Family Dollar Stores, Inc. ³	No	02/15/11	02/14/11	02/16/11	\$43.83	\$53.25	\$57.50	69%
[17] Lawson Software, Inc.	Yes	03/11/11	03/10/11	03/14/11	\$11.50	\$12.24	\$11.25	-296%
[18] SRA International, Inc.	Yes	04/01/11	03/31/11	04/01/11	\$28.36	\$31.05	\$31.25	93%
[19] Warner Music Group Corp.	Yes	05/06/11	05/03/11	05/06/11	\$7.37	\$8.18	\$8.25	92%
[20] BJ's Wholesale Club, Inc.	Yes	06/29/11	03/18/11	06/29/11	\$47.74	\$50.29	\$51.25	73%
[21] Blackboard, Inc.	Yes	07/01/11	04/18/11	07/01/11	\$37.16	\$44.17	\$45.00	89%
[22] Immucor, Inc.	Yes	07/05/11	07/01/11	07/05/11	\$20.73	\$26.99	\$27.00	100%
[23] Kinetic Concepts, Inc.	Yes	07/13/11	07/12/11	07/13/11	\$64.49	\$68.23	\$68.50	93%
[24] Emdeon, Inc.	Yes	08/04/11	07/26/11	08/04/11	\$13.18	\$18.35	\$19.00	89%
[25] Harleysville Group, Inc.	Yes	09/29/11	09/28/11	09/29/11	\$31.52	\$58.96	\$60.00	96%
[26] Pharmaceutical Product Development	Yes	10/03/11	08/12/11	10/03/11	\$26.60	\$32.28	\$33.25	85%
[27] Blue Coat Systems, Inc.	Yes	12/09/11	12/08/11	12/09/11	\$17.48	\$25.11	\$25.81	92%
[28] AboveNet, Inc.	Yes	03/19/12	03/15/12	03/19/12	\$72.77	\$83.74	\$84.00	98%
[29] Collective Brands, Inc.	Yes	05/01/12	04/30/12	05/01/12	\$20.77	\$21.16	\$21.75	40%
[30] P.F. Chang's China Bistro, Inc.	Yes	05/01/12	04/30/12	05/01/12	\$39.69	\$51.48	\$51.50	100%
[31] Par Pharmaceutical Cos., Inc.	Yes	07/16/12	07/13/12	07/16/12	\$36.58	\$50.00	\$50.00	100%
[32] Best Buy Co., Inc.	No	08/06/12	08/03/12	08/06/12	\$17.64	\$19.99	\$26.00	28%
[33] Ancestry.com, Inc.	Yes	10/22/12	07/24/12	10/22/12	\$27.23	\$31.44	\$32.00	88%
[34] JDA Software Group, Inc.	Yes	11/01/12	10/31/12	11/01/12	\$38.15	\$44.76	\$45.00	96%
[35] Compuware Corp.	No	12/17/12	12/14/12	12/17/12	\$9.53	\$10.76	\$11.00	84%
[36] H.J. Heinz Co.	Yes	02/14/13	02/13/13	02/14/13	\$60.48	\$72.50	\$72.50	100%
[37] Gardner Denver, Inc.	Yes	03/08/13	10/24/12	03/08/13	\$54.75	\$74.74	\$76.00	94%
[38] National Financial Partners Corp.	Yes	04/15/13	03/12/13	04/15/13	\$20.05	\$25.01	\$25.35	94%
[39] Buckeye Technologies LLC	Yes	04/24/13	04/23/13	04/24/13	\$29.93	\$37.86	\$37.50	105%
[40] BMC Software, Inc.	Yes	05/06/13	03/20/13	05/06/13	\$43.99	\$45.42	\$46.25	63%
[41] The Smithfield Packing Co.	Yes	05/29/13	05/28/13	05/29/13	\$25.97	\$33.35	\$34.00	92%
[42] Molex LLC	Yes	09/09/13	09/06/13	09/09/13	\$29.34	\$38.63	\$38.50	101%
[43] Valassis Communications, Inc.	Yes	12/18/13	12/17/13	12/18/13	\$28.30	\$34.60	\$34.04	110%
[44] The Jones Group, Inc.	Yes	12/19/13	09/10/13	12/20/13	\$14.53	\$14.87	\$15.00	72%
[45] Beam, Inc.	Yes	01/13/14	01/10/14	01/13/14	\$66.97	\$83.42	\$83.50	100%
[46] PetroLogistics LP ⁴	Yes	05/28/14	05/27/14	05/28/14	\$12.93	\$14.30	\$14.00	128%
[47] OmniVision Technologies, Inc.	Yes	08/14/14	08/13/14	08/14/14	\$24.60	\$28.29	\$29.00	84%
[48] Compuware Corp.	Yes	09/02/14	08/29/14	09/02/14	\$9.35	\$10.59	\$10.43	115%
[49] TIBCO Software, Inc.	Yes	09/29/14	09/23/14	09/29/14	\$19.00	\$23.65	\$24.00	93%
[50] Cleco Corp.	Yes	10/20/14	10/17/14	10/20/14	\$48.27	\$53.24	\$55.37	70%
[51] PetSmart, Inc.	Yes	12/14/14	07/02/14	12/15/14	\$59.81	\$80.97	\$83.00	91%
[52] Life Time Fitness, Inc.	Yes	03/16/15	08/22/14	03/16/15	\$41.60	\$70.68	\$72.10	95%
[53] Informatica LLC	Yes	04/07/15	03/19/15	04/07/15	\$43.85	\$47.79	\$48.75	80%
[54] Excel Trust, Inc.	Yes	04/10/15	04/09/15	04/10/15	\$13.84	\$15.82	\$15.85	99%
[55] OM Group, Inc.	Yes	06/01/15	05/29/15	06/01/15	\$26.54	\$34.04	\$34.00	101%
[56] Dealertrack Technologies, Inc.	Yes	06/15/15	06/12/15	06/15/15	\$39.85	\$62.98	\$63.25	99%
[57] Home Properties, Inc.	Yes	06/22/15	04/24/15	06/22/15	\$68.91	\$74.01	\$75.23	81%
[58] StanCorp Financial Group, Inc.	Yes	07/23/15	07/22/15	07/24/15	\$77.66	\$113.45	\$115.00	96%
[59] Symetra Financial Corp.	Yes	08/11/15	08/07/15	08/11/15	\$26.77	\$31.50	\$32.00	90%
[60] Strategic Hotels & Resorts, Inc.	Yes	09/08/15	07/22/15	09/08/15	\$13.04	\$14.07	\$14.25	85%
[61] Solera Holdings, Inc.	Yes	09/13/15	08/03/15	09/14/15	\$36.39	\$53.66	\$55.85	89%
[62] Cablevision Systems Corp.	Yes	09/17/15	07/09/15	09/17/15	\$24.85	\$32.51	\$34.90	76%
[63] BioMed Realty Trust, Inc.	Yes	10/08/15	09/21/15	10/08/15	\$19.74	\$23.45	\$23.75	93%
[64] SolarWinds North America, Inc.	Yes	10/21/15	10/08/15	10/21/15	\$41.88	\$58.31	\$60.10	90%
[65] MedAssets, Inc.	Yes	11/02/15	10/30/15	11/02/15	\$23.68	\$31.00	\$31.35	95%

Exhibit 1

Probability of Deal Completion in Precedent Going Private Transactions¹
Calculated Using Dr. Hartzmark's Probability of Deal Completion Formula
August 7, 2008 - August 6, 2018

Target Company	Completed?	Announcement Date [A]	Unaffected Date [B]	Price Reaction Date [C]	Price on Unaffected Date \$/Share [D]	Price on Reaction Date \$/Share [E]	Offer Price \$/Share [F]	Probability of Deal Completion [G]
[66] Fidelity & Guaranty Life, Inc.	No	11/09/15	11/06/15	11/09/15	\$26.22	\$25.79	\$26.80	-74%
[67] Keurig Green Mountain, Inc.	Yes	12/07/15	12/04/15	12/07/15	\$51.70	\$88.89	\$92.00	92%
[68] Inland Real Estate Corp.	Yes	12/15/15	12/14/15	12/15/15	\$9.94	\$10.64	\$10.60	106%
[69] Apollo Education Group, Inc.	Yes	02/07/16	01/08/16	02/08/16	\$6.59	\$8.62	\$9.50	70%
[70] The ADT Corp.	Yes	02/16/16	02/12/16	02/16/16	\$26.87	\$39.64	\$42.00	84%
[71] Integrated Device Technology, Inc.	No	04/12/16	04/11/16	04/12/16	\$19.43	\$20.22	\$32.00	6%
[72] Cvent, Inc.	Yes	04/18/16	04/15/16	04/18/16	\$21.30	\$35.23	\$36.00	95%
[73] Lexmark International, Inc.	Yes	04/19/16	10/21/15	04/20/16	\$31.06	\$37.90	\$40.50	72%
[74] ExamWorks Group, Inc.	Yes	04/27/16	04/26/16	04/27/16	\$33.57	\$36.00	\$35.05	164%
[75] Krispy Kreme Doughnuts, Inc.	Yes	05/09/16	05/06/16	05/09/16	\$16.86	\$20.96	\$21.00	99%
[76] Marketo, Inc.	Yes	05/31/16	05/27/16	05/31/16	\$32.20	\$35.23	\$35.25	99%
[77] Qlik Technologies, Inc.	Yes	06/02/16	03/02/16	06/02/16	\$24.19	\$30.08	\$30.50	93%
[78] Talen Energy Corp.	Yes	06/03/16	03/31/16	06/03/16	\$9.00	\$13.99	\$14.00	100%
[79] Diamond Resorts International, Inc.	Yes	06/29/16	02/24/16	06/29/16	\$19.11	\$29.79	\$30.25	96%
[80] EverBank Financial Corp.	Yes	08/08/16	08/02/16	08/08/16	\$18.01	\$19.20	\$19.50	80%
[81] Press Ganey Holdings, Inc.	Yes	08/09/16	08/08/16	08/09/16	\$40.33	\$41.00	\$40.50	394%
[82] Rackspace Hosting, Inc.	Yes	08/26/16	08/03/16	08/26/16	\$23.16	\$31.50	\$32.00	94%
[83] Interactive Intelligence Group, Inc.	Yes	08/31/16	08/29/16	08/31/16	\$57.20	\$59.85	\$60.50	80%
[84] Infoblox, Inc.	Yes	09/19/16	05/11/16	09/19/16	\$15.31	\$26.35	\$26.50	99%
[85] Cabela's, Inc.	Yes	10/03/16	11/04/15	10/03/16	\$39.53	\$63.18	\$65.50	91%
[86] Genworth Financial, Inc.	No	10/23/16	10/21/16	10/24/16	\$5.21	\$4.79	\$5.43	-191%
[87] Team Health Holdings, Inc.	Yes	10/31/16	10/03/16	10/31/16	\$32.80	\$42.85	\$43.50	94%
[88] Lattice Semiconductor Corp.	No	11/03/16	11/02/16	11/03/16	\$6.37	\$7.55	\$8.30	61%
[89] NeuStar, Inc.	Yes	12/14/16	11/11/16	12/14/16	\$23.05	\$33.45	\$33.50	100%
[90] VCA, Inc.	Yes	01/09/17	01/06/17	01/09/17	\$70.77	\$90.79	\$93.00	90%
[91] Air Methods Corp.	Yes	03/14/17	01/31/17	03/14/17	\$35.70	\$43.00	\$43.00	100%
[92] Panera Bread Co.	Yes	04/05/17	03/31/17	04/05/17	\$261.87	\$312.94	\$315.00	96%
[93] VWR Corp.	Yes	05/05/17	05/02/17	05/05/17	\$28.52	\$33.28	\$33.25	101%
[94] West Corp.	Yes	05/09/17	11/01/16	05/10/17	\$20.01	\$23.11	\$23.50	89%
[95] PAREXEL International Corp.	Yes	06/20/17	05/05/17	06/20/17	\$68.86	\$87.04	\$88.10	94%
[96] Staples, Inc.	Yes	06/28/17	04/03/17	06/29/17	\$8.66	\$10.08	\$10.25	89%
[97] Parkway, Inc.	Yes	06/30/17	06/29/17	06/30/17	\$20.38	\$22.89	\$23.05	94%
[98] Bankrate, Inc.	Yes	07/03/17	06/30/17	07/03/17	\$12.85	\$13.95	\$14.00	96%
[99] Monogram Residential Trust, Inc.	Yes	07/04/17	06/30/17	07/05/17	\$9.71	\$11.89	\$12.00	95%
[100] Clubcorp Holdings Inc.	Yes	07/09/17	07/07/17	07/10/17	\$13.10	\$17.05	\$17.12	98%
[101] WebMD Health Corp.	Yes	07/24/17	02/15/17	07/24/17	\$51.31	\$66.10	\$66.50	97%
[102] Calpine Corp.	Yes	08/18/17	05/09/17	08/18/17	\$10.07	\$14.92	\$15.25	94%
[103] Gigamon, Inc.	Yes	10/26/17	09/08/17	10/27/17	\$42.35	\$38.70	\$38.50	95%
[104] Barracuda Networks, Inc.	Yes	11/27/17	11/24/17	11/27/17	\$23.69	\$27.59	\$27.55	101%
[105] Buffalo Wild Wings, Inc.	Yes	11/28/17	11/10/17	11/28/17	\$118.85	\$155.60	\$157.00	96%
[106] AmTrust Financial Services, Inc.	Yes	01/09/18	01/08/18	01/10/18	\$10.14	\$12.69	\$12.25	121%
[107] Blackhawk Network Holdings, Inc.	Yes	01/16/18	01/12/18	01/16/18	\$36.50	\$45.05	\$45.25	98%
[108] Callidus Software, Inc.	Yes	01/29/18	01/26/18	01/30/18	\$32.25	\$35.95	\$36.00	99%
[109] Ply Gem Holdings, Inc.	Yes	01/31/18	01/30/18	01/31/18	\$18.10	\$21.45	\$21.64	95%
[110] VeriFone Systems, Inc.	Yes	04/09/18	04/09/18	04/10/18	\$15.00	\$22.78	\$23.04	97%
[111] Analogic Corp.	Yes	04/10/18	06/07/17	04/11/18	\$67.45	\$83.35	\$84.00	96%
[112] Financial Engines, Inc.	Yes	04/30/18	04/27/18	04/30/18	\$33.95	\$44.65	\$45.00	97%
[113] Gramercy Property Trust	Yes	05/07/18	05/04/18	05/07/18	\$23.82	\$27.50	\$27.50	100%
[114] Envision Healthcare Corp.	Yes	06/11/18	11/13/17	06/11/18	\$25.86	\$44.65	\$46.00	93%
[115] Cotiviti Holdings, Inc.	Yes	06/19/18	06/18/18	06/19/18	\$39.89	\$43.99	\$44.75	84%
[116] Web.com Group, Inc.	Yes	06/21/18	06/20/18	06/21/18	\$23.20	\$25.85	\$25.00	147%
[117] Education Realty Trust, Inc.	Yes	06/25/18	05/31/18	06/25/18	\$36.54	\$41.36	\$41.50	97%
[118] LifePoint Health, Inc. /TN/	Yes	07/23/18	07/19/18	07/23/18	\$48.60	\$64.90	\$65.00	99%
Minimum: -296% 25th Percentile: 89% Median: 94% 75th Percentile: 99% Maximum: 394%								
Tesla, Inc. ⁵	No	08/07/18	08/06/18	08/07/18	\$356.85	\$379.57	\$420.00	36%

Exhibit 1

Probability of Deal Completion in Precedent Going Private Transactions¹
Calculated Using Dr. Hartzmark's Probability of Deal Completion Formula
August 7, 2008 - August 6, 2018

Notes and Sources:

[A]: Per Factset. Factset defines the Announcement Date as: The date the transaction was first publicly disclosed by either the target or the acquirer. In a deal that starts out as a rumor, the announcement date will be the date on which talks of the transaction first appeared in a major financial or trade publication. Once confirmed and the transaction is no longer a rumor, the announcement date will be updated to reflect the date upon which one of the parties involved in the deal disclosed the formal offer or a definitive agreement.

[B]: Per Factset. Factset defines the Unaffected Date as: The date of the share price prior to rumors of the announcement or the announcement date of the transaction. We use the price on the Unaffected Date as a proxy for the "the public entity value should the going private deal fail or not be completed" used in Dr. Hartzmark's formula, which typically is the last trade day before the Announcement Date.

[C]: The Price Reaction date is the first trade date after the announcement.

[D]: Target company stock price on the Unaffected Date in column [B] per CRSP.

[E]: Target company stock price on the Price Reaction Date in column [C] per CRSP.

[F]: Per Factiva. Offer price as of the Announcement Date in column [A].

[G] = ([E] - [D]) / ([F] - [D]) per Hartzmark Report ¶ 180-181.

1. We searched the Factset database for going private transactions announced during August 7, 2008 through August 6, 2018 in which the transaction type is merger, the deal "attitude" is not "hostile," the offer is not a competing bid, the equity value of the deal is at least \$1 billion, the consideration offered is all cash, and the target is a publicly traded, U.S. company. Factset defines a "hostile" deal "attitude" as "[t]he target's board of directors viewed the acquirer's proposal as unsatisfactory and recommended that shareholders reject the offer." We excluded one transaction in which the target company's stock is not included in the Center for Research in Security Prices ("CRSP") database and one transaction where the offer price was not disclosed as of the announcement date.

2. Factset did not list an unaffected date for the Novell transaction, therefore we used the last trade day prior to the announcement date reported by Factset.

3. In the Family Dollar transaction, the unconditional proposal to acquire the company was for \$55 - \$60 per share. We used the midpoint of \$55 and \$60 for the purposes of our analyses.

4. In the PetroLogistics transaction, certain insiders and private equity firms owning 73% of shares received \$12 per share while minority shareholders owning 27% of shares received \$14 per share. We used the \$14 per share offer price for the purposes of our analyses.

5. Per Hartzmark Report ¶ 181, Tesla's 36% probability of deal completion is calculated using an unaffected stock price of \$356.85, Tesla's August 7, 2018 intraday price at 12:47 PM. Tesla's probability of deal completion is 48% when calculated using the price on the Unaffected Date reported by Factset, i.e., Tesla's August 6, 2018 closing price of \$341.99.

Exhibit 2
Tesla Notes
Percentage Difference of Cumulative Residual Returns
Based on Dr. Hartzmark's Analysis of BVAL Prices and
Volume-Weighted Average Prices ("VWAPs")
August 8, 2018 - August 17, 2018

Tesla Note	Cumulative Residual Return		
	BVAL ¹	VWAP ²	% Difference
	[A]	[B]	[C = A / B - 1]
2019 Note	-9.8%	-8.2%	19.2%
2021 Note	-14.3%	-10.1%	42.0%
2022 Note	-14.1%	-11.6%	21.2%

1. BVAL residual returns are reported in Hartzmark Report workbook "App 11 12, TBL 11 12 13 15.xlsx" tab "Bond Return-BVAL."
2. VWAP residual returns are based on the actual and predicted returns reported in Hartzmark Report workbook "App 11 12, TBL 11 12 13 15.xlsx" tab "Bond Return-TRACE" except for August 8, 2018, when the actual return is calculated as the percentage change between the post-tweet VWAP on August 7, 2018 reported in "App 13 TBL 14.xlsx" tab "Trades" and the August 8, 2018 VWAP reported in Hartzmark Report workbook "App 11 12, TBL 11 12 13 15.xlsx" tab "Bond Return-TRACE;" results are substantially similar if either the last traded price or the last traded price during trading hours is used in place of the post-tweet VWAP.